

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
NORTHERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	No. 3:10-CR-73
vs.)	Knoxville, Tennessee
)	May 15, 2012
DARREN WESLEY HUFF)	
)	
Defendant.)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE THOMAS A. VARLAN
UNITED STATES DISTRICT JUDGE

KRISTIN E. SCHULTZ BURKE, LCR #247
MILLER & MILLER COURT REPORTERS
12804 Union Road, Knoxville, Tennessee 37934
Phone: 865-675-1471 / Fax: 865-675-6398
Email: JMccon3590@aol.com

1 APPEARANCES:

2 For the Plaintiff:

JEFFREY E, THEODORE, ESQ.
A. WILLIAM MACKIE, ESQ.
U.S. Department of Justice
Office of U.S. Attorney
800 Market Street, Suite 211
Knoxville, Tennessee 37902

6 For the Defendants:

G. SCOTT GREEN, ESQ.
800 South Gay Street, Suite 1600
Knoxville, TN 37929

INDEX

WITNESS	PAGE
SPECIAL AGENT MATTHEW JOHNSON	
Direct Examination by Mr. Theodore	8
Cross-Examination by Mr. Green	13
Redirect Examination by Mr. Theodore	17
Recross-Examination by Mr. Green	19
DETECTIVE DANIEL DOCKERY	
Direct Examination by Mr. Theodore	20
Cross-Examination by Mr. Green	25
Redirect Examination by Mr. Theodore	34
Recross-Examination by Mr. Green	35
ARGUMENT BY MR. THEODORE	36
ARGUMENT BY MR. GREEN	41
ARGUMENT BY MR. THEODORE	44
ARGUMENT BY MR. GREEN	45
ARGUMENT BY MR. MACKIE	55
ARGUMENT BY MR. THEODORE	68
ARGUMENT BY MR. GREEN	70
STATEMENTS BY THE DEFENDANT, MR. HUFF	71
JUDGE'S RULING	77

1 This above-styled cause came to be heard on the
2 15th day of May, 2012, in the United States District Court
3 for the Eastern District of Tennessee, Northern Division,
4 the Honorable Thomas A. Varlan presiding.

5 THE DEPUTY CLERK: All rise.

6 This Honorable Court is again in session, the
7 Honorable Thomas A. Varlan, United States District Judge,
8 presiding.

9 Please come to order and be seated.

10 THE COURT: Good morning, everyone.

11 Call up the next case, please.

12 THE DEPUTY CLERK: Criminal Action 3:10-CR-73,
13 United States of America vs. Darren Wesley Huff.

14 Jeffrey Theodore and Mr. William Mackie are here
15 on behalf of the Government.

16 Is the Government present and ready to proceed?

17 MR. THEODORE: Present and ready, Your Honor.

18 THE DEPUTY CLERK: Mr. Scott Green is here on
19 behalf of the Defendant.

20 Is the Defendant present and ready to proceed?

21 MR. GREEN: Ready to proceed.

22 THE COURT: Thank you.

23 As everyone knows, the parties appeared before
24 the Court initially for purposes of sentencing in this
25 case on April 20, 2012. At that time, the Court heard the

1 parties' positions on their objections to the Presentence
2 Investigation Report. The Court took those objections
3 under advisement and ruled on them via written order on
4 May 2, 2012.

5 Today we'll continue with the sentencing. The
6 Court will hear from the parties regarding sentencing,
7 allow the Defendant to allocute if he wishes, I will rule
8 upon any motions for variance or departure, and then I
9 will impose a judgment and sentence.

10 I'm quite certain we swore in Mr. Huff on
11 April 20, but just since we've had a break in the
12 sentencing, why don't we begin by asking Mr. Huff to rise
13 and we'll have you sworn in by the Courtroom Deputy for
14 purposes of this continued sentencing hearing.

15 THE DEPUTY CLERK: Sir, if you will raise your
16 right hand.

17 Do you solemnly swear to true answers make to
18 all questions asked at this time as you shall answer unto
19 God?

20 If so, please say, "I do."

21 MR. HUFF: I do.

22 THE DEPUTY CLERK: Please state your name for
23 the record.

24 MR. HUFF: Darren Huff.

25 THE DEPUTY CLERK: Thank you, sir.

1 THE COURT: You may be seated.

2 Again, just as background, the Court notes that
3 Defendant's filing of the sentencing memorandum under
4 seal, Document 189 in the record, which the Court
5 construes as a motion for variance, the Government has
6 filed a response to the sentencing memorandum, Document
7 190. The Government also filed a motion for an upward
8 departure, Document 192. And the Defendant filed a pro se
9 motion to take judicial notice and motion in allocution,
10 Document 193. Regarding the pro se motion, the Government
11 moved to strike the motion as being filed in contravention
12 of Local Rule 83.4(c). The Court granted the Government's
13 motion to the extent the Defendant's filing was construed
14 as a motion for relief. The rule that would consider the
15 filing as relevant to sentencing pursuant to Criminal Rule
16 of Procedure Rule 32(i)(4).

17 With this background in mind, let's do this.
18 Does the Government wish to present witnesses this
19 morning?

20 MR. THEODORE: Yes, Your Honor. We have two
21 witnesses this morning.

22 THE COURT: Mr. Green, do you have any
23 additional witnesses?

24 MR. GREEN: No, Your Honor.

25 THE COURT: We'll hear from the witnesses and

1 then we'll hear from the parties concerning sentencing and
2 the motions pending.

3 MR. THEODORE: Okay. And, Your Honor, we have
4 filed the motion as the indicator for upward departure,
5 two bases, §5K2.17 of the guidelines and §5K2.7. There
6 will be one witness for each one of those different
7 sections for each basis for departure.

8 I would like to call Special Agent Scott Johnson
9 to the Stand.

10 THE DEPUTY CLERK: Do you solemnly swear your
11 testimony will be the truth, the whole truth and nothing
12 but the truth, so help you God?

13 THE WITNESS: I do.

14 THE DEPUTY CLERK: Please state and spell your
15 name for the record.

16 THE WITNESS: Matthew Scott Johnson;

17 M-A-T-T-H-E-W, S-C-O-T-T, J-O-H-N-S-O-N.

18 THE DEPUTY CLERK: Thank you, sir.

19 THE COURT: And before we hear from the witness,
20 Mr. Theodore, just to put it in the proper context, I know
21 the Government is requesting an upward departure pursuant
22 to the cited guidelines provisions, but we do have -- in
23 light of the Court's rulings on the objections to the
24 presentence report, we have a restricted guideline range,
25 or we have an advisory guideline range higher than the

1 statutory maximum resulting in a restricted guideline
2 range equivalent to the statutory maximum.

3 MR. THEODORE: Right. That's right, Your Honor.
4 Depending upon -- I mean, this motion, our motion for a
5 departure could well end up being moot or we could end up
6 withdrawing the motion depending on the Court's -- what
7 the Court does rule, if it does rule in certain ways and
8 then the timing of that rule. I guess this would also
9 relate to the §3553 factors as well.

10 THE COURT: Thank you. You may proceed.

11 MR. GREEN: Thank you.

12 MATTHEW SCOTT JOHNSON,
13 having first been duly sworn, was examined as follows:

14 DIRECT EXAMINATION

15 BY MR. THEODORE:

16 Q Could you state your name and occupation for
17 the record, please.

18 A Special Agent Matthew Scott Johnson. I'm a
19 Special Agent with the FBI.

20 Q How long have you worked for the FBI?

21 A Over 14 years.

22 Q What particular section do you work in with
23 the FBI?

24 A Counter Terrorism, Domestic Terrorism.

25 Q Describe a little bit about your experience

1 in the different sections you've worked with the FBI.

2 A I worked four years of drugs work, narcotics
3 work in Miami. I worked counter terrorism with the Hostage
4 Rescue Team. For the last four years, I've worked here in
5 Knoxville counter terrorism, international terrorism,
6 domestic terrorism.

7 Q What did you do before you were FBI agent?

8 A I was a Chief Warrant Officer in the United
9 States Army as a helicopter pilot.

10 Q As part of your military experience and then
11 your experience as an FBI agent, have you had a lot of
12 experience with firearms?

13 A Yes, I have. In the military, I was Range
14 Safety Officer, Range Officer in Charge. I went to Unit
15 Armor School. Then, with the FBI, within 14 years, I have
16 been assigned to the FBI SWAT Team, a sniper on the FBI
17 Sniper Team. For 5 of those 14 years, I have been through
18 training as a firearms instructor with the FBI.

19 Q So you're a firearms instructor for the FBI?

20 A Correct.

21 Q Do you have a special certification for
22 that?

23 A Yes. Every five years, we have to go
24 through a recertification process.

25 Q Are you experienced and familiar with

1 automatic weapons?

2 A Yes, I am.

3 Q Are you familiar and experienced with the
4 weapon semi-automatic AK-47?

5 A Yes.

6 Q You were here as the case agent during the
7 trial on this case?

8 A Yes, I was.

9 Q You were aware there was an exhibit
10 admitted -- an AK-47, that was admitted at trial?

11 A Yes, sir.

12 Q I want to show you the substituted exhibit
13 for that, which was Trial Exhibit 6A. I want to show that
14 to you.

15 MR. GREEN: Your Honor, we'll stipulate there
16 was an AK-47 introduced at trial. There's a lot of things
17 in this case that are kind of hard to bring in with this.

18 THE COURT: And the Court recalls that exhibit
19 if you want to do that.

20 MR. THEODORE: Okay. That's fine.

21 BY MR. THEODORE:

22 Q You did examine that firearm at some point
23 in time?

24 A Yes, I did.

25 Q Were there also some ammunition clips that

1 were also introduced at trial?

2 A Yes, there were. There were four clips that
3 were seized with that weapon at his residence.

4 Q Okay. Those ammunition clips, were those
5 actually -- were they loaded at that time?

6 A Yes, they were.

7 Q How many rounds were in each of those
8 ammunition clips?

9 A Approximately 29 to 30 rounds each.

10 Q They were loaded at the time they were
11 seized?

12 A Yes, they were.

13 Q Were those clips designed for the AK-47 that
14 was introduced at trial?

15 A Yes, they were.

16 Q Were there any other clips, ammunition
17 clips, that were seized in the case?

18 A Yes. On April the 30th, 2010, upon the
19 Defendant's arrest here in Knoxville, in his vehicle, there
20 were eight clips, eight magazines, the same nature, for the
21 AK-47 that was fully loaded as well.

22 Q So how many rounds would have been in each
23 one of those clips?

24 A Twenty-nine to thirty.

25 Q Okay.

1 A Then there was a box of ammunition, an ammo
2 can as well full of 7.62 -- the same rounds that were in
3 the clips.

4 Q How much ammunition for an AK-47 was seized
5 all together in this case?

6 A Over 500 rounds at his residence. I believe
7 it was 525 rounds at his residence. Then, during his
8 arrest here in Knoxville, I believe he had over 800 rounds.
9 Now all of those weren't AK-47; some were 45 and some were
10 40 cal, but the majority were AK-47.

11 Q You said the clips. I'm kind of holding up
12 Trial Exhibit 27. Do you remember that exhibit?

13 A Yes, sir. Those were seized on April 30th
14 here in Knoxville out of his vehicle.

15 Q Again, you said those were fully loaded?

16 A Correct.

17 Q What type of ammunition again goes in those?

18 A 7.62. It's a rifle round.

19 Q Those were designed for the AK-47 rifle?

20 A Yes.

21 Q Are those clips that I have, again, Trial
22 Exhibit 27 and Trial Exhibit 7, the four clips seized from
23 the Defendant's home, are those large capacity magazines?

24 A Yes, they are.

25 Q Again, because of the quantity, certainly

1 every one of those clips had more than over 15 rounds each?

2 A Yes.

3 THE DEPUTY CLERK: The unit is working now.

4 MR. GREEN: I'm sorry.

5 THE DEPUTY CLERK: It's working, the screen.

6 MR. THEODORE: Okay.

7 Your Honor, I have no further questions.

8 THE COURT: Thank you.

9 Mr. Green?

10 MR. GREEN: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. GREEN:

13 Q Agent Johnson.

14 A Good morning, Mr. Green.

15 Q How are you?

16 A I'm good. How are you?

17 Q Just fine.

18 If I understand your testimony correctly,
19 you've been doing this with the Federal Bureau of
20 Investigation in some capacity for some 14 years; is that
21 correct?

22 A Correct.

23 Q You have been in counter terrorism for how
24 long now?

25 A Three-and-a-half to four years with the

1 Hostage Rescue Team, and then for the last three to four
2 years here in Knoxville.

3 Q Have you ever been involved in another case,
4 another prosecution, wherein 18 United States Code §231 was
5 utilized?

6 A No.

7 Q Are you aware of another case wherein 18
8 United States Code §231 has been utilized?

9 A Not personally aware, no.

10 Q Thank you.

11 All right. Now, when you found the AK-47
12 clips that we were just looking at on Mr. Huff's person
13 when he was arrested, there was no AK-47 in that vehicle,
14 was there?

15 A No, there was not.

16 Q In fact, the AK-47 was back in Georgia and
17 he was arrested in Knoxville, correct?

18 A Correct.

19 Q And there's no way, would you agree with me,
20 that we can say that that is in close proximity of that
21 weapon if the clips are in Knoxville and the weapon is in
22 Georgia, correct?

23 A Correct.

24 Q April the 20th, were you in Madisonville
25 that day?

1 A Yes, I was.

2 Q Did you see Darren Huff that day?

3 A Yes, I did.

4 Q Did you see Darren Huff with an AK-47 that
5 day?

6 A No, I did not.

7 Q In fact, you were aware and you have seen
8 the video of the roadside stop, correct?

9 A I've seen the video.

10 Q This crime of violence that we're all
11 talking about that he has supposedly been guilty of
12 perpetrating, he was allowed to leave the roadside on
13 Highway 68 and go into Madisonville, was he not?

14 A Yes, he was.

15 Q At any point in time, did you see him
16 retrieve an AK-47 in Madisonville?

17 A No, I did not.

18 Q At any point in time, did you see him
19 attempt to retrieve an AK-47 while in Madisonville?

20 A No, I did not.

21 Q At any point in time, did you see him
22 attempt to load what has been described as a high capacity
23 magazine into an AK-47 while in Madisonville?

24 A No, sir.

25 Q There was no assemblage of three or more

1 persons who were going to create a civil disobedience or
2 disturbance on the side of Highway 68, was there?

3 A Not on the side of Highway 68, no.

4 Q Right. That was my question. On the side
5 of Highway 68, he was pulled over, had one other person
6 with him and that was it, correct?

7 A In that vehicle, but there was another
8 vehicle with their vehicle that had pulled off to the side
9 to video; so there were three people there.

10 Q But it's been the United States' position
11 throughout that the intent was to do something in
12 Madisonville, correct?

13 A Correct.

14 Q You never saw anything happen with an AK-47
15 within Madisonville, did you?

16 A Correct.

17 Q The magazines that we've seen pictures of,
18 where could one purchase such a magazine?

19 A At a local gun shop.

20 Q Perfectly legal to do so; isn't it?

21 A Yes.

22 Q Perfectly legal to possess them; isn't it?

23 A Yes.

24 MR. GREEN: I believe that's all.

25 THE COURT: Thank you.

1 Mr. Theodore, anything further?

2 REDIRECT EXAMINATION

3 BY MR. THEODORE:

4 Q Were there any other ammunition clips like
5 the exhibits we just looked at, Trial Exhibit 7 and 27, any
6 another clips seized from the Defendant, his vehicles or
7 his home?

8 A For the AK-47 or other weapons?

9 Q No, for the AK-47.

10 MR. GREEN: I'm going to object unless he limits
11 it to the seizure date that he's talking about and from
12 where.

13 BY MR. THEODORE:

14 Q I'm talking about in the course of the case.
15 The search warrant of the house, of course, occurred at a
16 different time than his arrest; is that right?

17 A It occurred the same day.

18 Q The same day. Okay.

19 A April the 30th.

20 Q And the house was searched?

21 A Yes, it was.

22 Q Were there any other clips, ammunition
23 clips, for an AK-47 seized from the house?

24 A There were four clips seized from the house.

25 Q None other than those four?

1 A No.

2 Q What about from his truck when he was
3 arrested on April 30? Were there any other ammunition
4 clips seized besides the eight that were in the exhibit
5 here?

6 A There were for other weapons, yes.

7 MR. GREEN: I'm going to object unless he is
8 talking about an AK-47.

9 MR. THEODORE: That's what I'm referring to,
10 Your Honor.

11 BY MR. THEODORE:

12 Q For the AK-47.

13 A Not clips, but there was an ammo can that
14 was seized with -- I would have to check my notes, but
15 there were several hundred rounds in the ammo can in his
16 truck for an AK-47. At the house, there was an ammo can
17 seized with several hundred AK-47 rounds as well.

18 Q Any other clips, though, besides the eight
19 that were introduced at trial from his truck for the AK-47?

20 Is this all you're aware of that were --

21 A Yes.

22 Q Okay. Every clip that was seized that was
23 for an AK-47, would you characterize that as a large
24 capacity ammunition clip?

25 A Yes. Those are designed to fit in that

1 assault weapon, large capacity for an assault weapon.

2 MR. THEODORE: Thank you.

3 Nothing further.

4 THE COURT: Anything else further, Mr. Green?

5 RECROSS-EXAMINATION

6 BY MR. GREEN:

7 Q Are you aware of anyone, Agent Johnson, who
8 actually saw a clip that Mr. Huff had on his person or in
9 his vehicle on April the 20th which would have fit an
10 AK-47?

11 A Not for an AK-47.

12 Q And, in fact, there are AK-47 clips which
13 make the rifle functional that aren't large capacity clips;
14 is that not correct?

15 A Yes, there are.

16 MR. GREEN: Thank you.

17 THE COURT: Thank you, Agent Johnson. You can
18 go back to the counsel table.

19 Mr. Theodore?

20 MR. THEODORE: Yes, Your Honor. The next
21 witness we call is Detective Daniel Dockery.

22 THE DEPUTY CLERK: Please raise your right hand.

23 Do you solemnly swear your testimony will be the
24 truth, the whole truth and nothing but the truth, so help
25 you God?

1 THE WITNESS: Yes.

2 THE DEPUTY CLERK: Place state and spell your
3 name for the record.

4 THE WITNESS: Daniel Ray Dockery; D-A-N-I-E-L,
5 R-A-Y, D-O-C-K-E-R-Y.

6 DANIEL DOCKERY,
7 having first been duly sworn, was examined as follows:

8 DIRECT EXAMINATION

9 BY MR. THEODORE:

10 Q Mr. Dockery, what is your occupation?

11 A I'm a detective with the Madisonville City
12 Police Department.

13 Q How long have you worked there?

14 A I've worked there since 2004.

15 Q Were you working on April 20th, 2010?

16 A I was.

17 Q What were your duties on that day?

18 A On that particular day, I'll take you back
19 to the early hours. I worked night shift the night prior,
20 that is a 12-hour 6:00 to 6:00 shift. On that particular
21 night, I was told by my superiors to be on the look out for
22 any kind of suspicious vehicle, maybe something parked in a
23 suspicious place, so on and so forth.

24 On the early morning hours, me, and I have
25 two other guys, we were more or less on specific patrol

1 inside the city municipality buildings.

2 Q Was there anything unusual that you were
3 anticipating?

4 A Yes. As far as unusual, there was a threat
5 that Mr. Huff was to be in Madisonville on that particular
6 day. As far as the timeline, we have no clue. As far as
7 the only specifics I'm given is a man that is potentially
8 armed coming into the city.

9 Q Was there a great concern about that?

10 A Yes, sir.

11 Q Why was that?

12 A Well, anytime you have a man that is
13 potentially armed and supposedly being from some kind of
14 extremist group, there's also a potential for some kind of
15 violence.

16 On that particular morning, it started
17 probably 3 or 4:00. You know, we had officers coming from
18 THP, Tennessee Highway Patrol. We had bomb dogs on our
19 city ground and our city municipality offices, the county
20 offices.

21 Q Were they doing sweeps of the buildings?

22 A They were.

23 Q Is that typical?

24 A It is not.

25 Q Was that done in response to the belief that

1 Mr. Huff was going to be arriving?

2 A It is.

3 Q What else was done?

4 A As far as the bomb dogs, we're talking at 4
5 or 5:00 in the morning. I'm to get off at 6:00. Of
6 course, I have to stay over. There was a collective, and
7 this is a rough number, maybe 80 to 100 officers from
8 Madisonville City, Monroe County, Sweetwater City, Tellico,
9 TBI, the FBI, the anti-terrorism group, and DTF was there
10 in plain clothes, I want to say.

11 Q Were there certain precautions, other
12 precautions taken? You mentioned bomb dogs doing sweeps.
13 Anything else?

14 A Yes, sir. I didn't know the particulars
15 other than what I was told, but snipers on rooftops looking
16 out for all municipal buildings and businesses within our
17 city grid. We have a city grid where all our county
18 buildings are as far as the courthouse, city hall, court
19 clerk's office. Everybody that day was assigned to some
20 kind of special detail, you know. You might be there and
21 two or three people, "You're at the courthouse." "You're
22 at this corner." "You're at that corner." "You're in
23 plain clothes." "You're walking the streets."

24 Q Were there special assignments as far as
25 protective detail to certain buildings, municipal

1 buildings?

2 A Yes.

3 Q Is the --

4 A City --

5 Q Go ahead.

6 A City hall, that was the staging area. I was
7 assigned to the city hall building. You have the General
8 Sessions Court. You have the big courthouse. You have the
9 Court Clerk's Office. Even the little businesses in town,
10 somebody was assigned to that business to either walk that
11 grid and then report back to central, you know, exactly
12 what you see or anything suspicious.

13 Q Again, why was that done?

14 A That was done in precaution to Mr. Huff
15 arriving and a potential of violence.

16 Q Had you ever seen precautions like that
17 taken on any other instance?

18 A Since I been working there, no.

19 Q So that was unusual conduct, unusual
20 precautions you were taking?

21 A It was very unusual.

22 Q Were there any other things that were done,
23 any other surveillance techniques that were utilized in
24 preparation for this?

25 A Yes. ATF utilized their pole cam. Fort

1 Loudon, which is the utility board, has to come and
2 actually put it on top of a light pole. That was utilized
3 during this to keep a direct feed on the general court
4 building, you know, just in case one of our officers
5 couldn't be there or if they were somewhere else, that
6 somebody sitting at central had a feed at all times.

7 Q Is that something that is typically done
8 there in Madisonville?

9 A It is not. That's the first time I've ever
10 seen that utilized.

11 Q Describe city hall. Was it able to function
12 as normal on that day?

13 A City hall that day was open. Police
14 officers were in and out. I, for one, as far as a
15 civilian, other than city hall workers, I don't recall
16 seeing any civilians there.

17 Q Why do you think that is?

18 MR. GREEN: I object, Your Honor. That calls
19 for pure speculation.

20 MR. THEODORE: Your Honor, the rules of hearsay
21 don't apply at a sentencing hearing.

22 MR. GREEN: It's not a hearsay objection, Your
23 Honor. It calls for pure speculation for him to assume
24 why there weren't people there.

25 THE COURT: I think that's a valid objection.

1 You might want to approach it through a different
2 question.

3 MR. THEODORE: Very well.

4 BY MR. THEODORE:

5 Q You said you didn't see citizens there?

6 A I don't recall seeing any there.

7 Q Okay.

8 A I recall seeing a massive amount of law
9 enforcement.

10 Q In your opinion, do you think that the
11 governmental function of Madisonville or the county was
12 disrupted on that day?

13 MR. GREEN: I object to his opinion, Your Honor.

14 THE COURT: I will overrule the objection.

15 THE WITNESS: Of course.

16 MR. THEODORE: Nothing further.

17 THE COURT: Cross-examination?

18 CROSS-EXAMINATION

19 BY MR. GREEN:

20 Q Detective Dockery.

21 A Yes, sir.

22 Q Good morning. How are you?

23 A How are you? I'm just fine.

24 Q I want to make sure I understand. There was
25 a whole lot of police officers that came to Madisonville on

1 April the 20th, correct?

2 A Yes.

3 Q There was your department, correct?

4 A Correct.

5 Q There was the Monroe County Sheriff's
6 Department, correct?

7 A Correct.

8 Q Sweetwater Police Department, correct?
9 THP?

10 A Correct.

11 Q TBI.

12 A Correct.

13 Q FBI.

14 A Correct.

15 Q Is that correct?

16 A Correct.

17 Q When did you to go to the academy?

18 A I went to the academy in '05.

19 Q Okay. Do you recall them teaching you at
20 the academy your job as a law enforcement officer is to
21 keep people safe?

22 Is that correct?

23 A Exactly. Yes, sir. That's correct.

24 Q And keep the community safe, correct?

25 A Correct.

1 Q All of these law enforcement officers, would
2 you assume that all of them have been trained in a similar
3 fashion that you've been trained?

4 A Correct.

5 Q So everybody there, their function was to
6 keep people safe, correct?

7 A Correct.

8 Q That's what cops do, right?

9 A Correct.

10 Q And that's why they were there, right?

11 A Right.

12 Q Can you tell me, in the city of
13 Madisonville, let's start first with city hall, was there a
14 single office that was closed down that day because of all
15 the cops around?

16 A No, sir.

17 Q Let's move over to the courthouse, the
18 county offices. Was there a single office that was shut
19 down that day?

20 A No, not that I recall.

21 Q There was courts going on that day, weren't
22 there?

23 A Yes.

24 Q Any courts shut down that day?

25 A No.

1 Q Were you aware of any cases that they had to
2 run the people off and say, "No. We can't accommodate you
3 today because Mr. Fitzpatrick's case is on"?

4 A I'm not personally aware, no.

5 Q The people that were all there, you-all had
6 been briefed and you were aware that you were there because
7 of these statements that Mr. Huff had supposedly made to
8 these bank tellers down in Georgia, correct?

9 A Correct.

10 Q You are aware that he was there as a
11 consequence of Mr. Fitzpatrick's case being on the docket,
12 correct?

13 A Correct.

14 Q Mr. Fitzpatrick's case didn't actually get
15 heard that day, did it?

16 A That I do not know.

17 Q You-all were watching, weren't you? You
18 were watching what was going on?

19 A I was not in the courtroom, no.

20 Q But you were monitoring -- there was
21 somebody monitoring where Mr. Fitzpatrick was coming and
22 going, correct?

23 A I would assume, yes.

24 Q In fact, his case got continued pretty
25 quickly that morning, did it not?

1 A I do not know.

2 Q Well, let me ask it a different way. The
3 whole thing was shut down and dissipated and everybody was
4 gone by about 11:00 that morning, weren't they?

5 A I personally didn't get home until 4:00 that
6 evening.

7 Q I'm not talking about when you got home.
8 I'm talking about all the people that you-all were
9 concerned about had cleared out by about 11:00 that
10 morning, hadn't they?

11 A I guess you would have to say -- what people
12 are you talking about?

13 Q I'm talking about Mr. Huff, Mr. Fitzpatrick
14 and the other people you were keeping an eye on.

15 Is that correct?

16 A Did somebody follow them out of town? I
17 don't know the specifics in that. I know that my detail
18 was over at 4:00 that evening.

19 Q When did you or someone communicate to you
20 that Mr. Huff had left Madisonville?

21 A I don't recall.

22 Q But wasn't that the whole point of being
23 there was to watch him?

24 A Yes.

25 Q Wasn't that a rather important fact to know,

1 when he left?

2 A It probably was, but, as far as me, I'm just
3 a ground troupe. I'm not the higher ups in this.

4 Q But did somebody not get on the radio and
5 say, "Hey. Subject Huff" -- or whatever the code name was
6 for him that day, the Boogieman, or whatever he was being
7 called -- "the Boogieman has left Madisonville"?

8 Nobody communicated that?

9 A I don't believe anybody said anything about
10 a Boogieman. No.

11 Q Well, what was his code name? What were
12 you-all calling him?

13 A Mr. Huff.

14 Q Did anybody say, "Mr. Huff has left
15 Madisonville"?

16 A I do not recall them saying that.

17 I can tell you that my detail was over at
18 4:00.

19 Q So, at 4:00, you didn't know whether or not
20 Darren Huff was still there or not?

21 A I did not know.

22 Q So he couldn't have been the sole focus of
23 all this law enforcement attention that was there, could
24 he?

25 A Of course he was.

1 Q Well, then why didn't you know that he was
2 gone?

3 A Because that's not my job to know he's gone.
4 I'm putting on a detail saying, "Here's what you need to
5 watch out for." Okay? "Now it's time for you to go home."
6 I don't know no specifics in it.

7 Q Well, that's fair. You don't know any of
8 the specifics.

9 A You don't bring in, you know, a 100 people
10 and try to drag them into one room and say, "Okay, guys.
11 This is what he's doing. This is where he's going. This
12 is what the FBI is doing. This is what the TBI is doing."
13 That is way above my pay grade.

14 Q Okay. Well, there was --

15 A My pay grade is I was on an assignment and I
16 got home at 4:00 that evening.

17 Q Okay. And your assignment was to do what?

18 A I was staged at city hall in case anything
19 happened.

20 Q Just keeping an eye on it?

21 A Precaution.

22 Q Like cops do sometimes when they have to go
23 monitor a situation, right?

24 A Right.

25 Q Like cops do, for instance, when they have

1 to go to a ball game to make sure since there's a crowd
2 there, there's not any kind of disturbance, right?

3 A Right.

4 Q Okay. You mentioned the fact that there was
5 some bomb dogs that were sweeping the place; is that
6 correct?

7 A Yes.

8 Q There weren't any bombs found, were there?

9 A No.

10 Q Was there a specific bomb threat that had
11 been made?

12 A I guess it would be the potential of any
13 kind of violence. Precaution.

14 Q So the precautions were made, that's my
15 point, at the discretion of those people that you say have
16 the higher pay grade that are paid to make these decisions,
17 right?

18 A Right.

19 Q Not necessarily anything that Mr. Huff may
20 have said or not said, these were discretionary calls that
21 they made, right?

22 A Right.

23 Q Is it a fair statement that while it may
24 have been tense there, you've never seen that many cops in
25 one place in your life?

1 A Correct.

2 Q If we pay cops to make us safer, then that
3 must have been an awful safe place that day, wasn't it?

4 A I would like to imagine, yes.

5 Q The pole cam that you were talking about, so
6 there was actually a camera that was monitoring what now?

7 A The general sessions building.

8 Q The general sessions building, right?

9 A Right.

10 Q So, if we had seen any evidence of somebody
11 pull a gun and attempting to effect a citizen's arrest,
12 there should be a picture of it, right?

13 MR. THEODORE: Objection. Calls for
14 speculation, Your Honor.

15 MR. GREEN: Well, let me ask it a different way.

16 THE COURT: Go ahead.

17 BY MR. GREEN:

18 Q That camera was making a video record of
19 what was going on at the general sessions building,
20 correct?

21 A I'm unsure if it's a video or just a live
22 feed.

23 Q Well, a live feed can be recorded, can it
24 not?

25 A I would say so, yes.

1 MR. GREEN: That's all.

2 THE COURT: Thank you.

3 Any Redirect?

4 MR. THEODORE: Just briefly, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. THEODORE:

7 Q You're aware that a gentleman named Walter
8 Fitzpatrick was supposed to have an arraignment on that
9 day?

10 A Yes.

11 Q That was part of the incentive for Mr. Huff
12 to actually come there on that day; is that right?

13 A Yes.

14 Q Are you aware that his court case, in fact,
15 was continued because of the massive presence there and all
16 the preparations that were taken in anticipation of the
17 protest that his arraignment was continued to another point
18 in time?

19 A Are you saying it was continued to the 20th
20 or from the 20th --

21 Q No, from the 20th to another point in time.

22 A Like I told him, I mean, I have no clue when
23 it was continued.

24 MR. THEODORE: Nothing further.

25 THE COURT: Anything further, Mr. Green?

1 MR. GREEN: Just very briefly.

2 RECROSS-EXAMINATION

3 BY MR. GREEN:

4 Q Before today, had you ever laid eyes on
5 Darren Huff?

6 A Yes, sir.

7 Q So you saw him that day?

8 A I did not see him that day. I had seen him
9 on previous dates. He was there on one other instance.

10 Q Would that have been the April 1st incident
11 with --

12 A It may have been.

13 Q Was he wearing camos that day?

14 A I don't recall.

15 Q Well, he wasn't. Okay?

16 Was he wearing camos on the 20th?

17 MR. THEODORE: Your Honor, I object. This is
18 going well beyond the scope of Direct.

19 BY MR. GREEN:

20 Q Was he dressed to take down the city that
21 day?

22 MR. THEODORE: Relevance, Your Honor.

23 THE COURT: I will allow this line of
24 questioning.

25

1 BY MR. GREEN:

2 Q Was he dressed to take down a city that day
3 or --

4 A I wouldn't know how one would dress to take
5 down a city.

6 Q Well, was he wearing a casual dress shirt
7 and chino pants?

8 A On that particular day, I told you I didn't
9 lay eyes on him. On the day that you're referring to, I
10 don't recall what he was wearing.

11 MR. GREEN: That's all.

12 THE COURT: Thank you, Detective Dockery.
13 Any other witnesses?

14 MR. THEODORE: No, Your Honor.

15 THE COURT: Why don't we do this then,
16 Mr. Theodore. If you would like to present argument, do
17 it in the context of the Government's motion or, more
18 broadly, on the subject of sentencing. We'll hear
19 argument from the Government --

20 MR. THEODORE: Okay.

21 THE COURT: -- and then we'll hear from
22 Mr. Green on sentencing as well as the motion; and I will
23 certainly give you the opportunity to respond.

24 MR. THEODORE: Yes, sir.

25 Your Honor, I'm going to address the motions for

1 upward departure by the Government. Mr. Mackie is going
2 to address the response to the Defendant's motion for a
3 variance and departure.

4 THE COURT: That's fine.

5 MR. THEODORE: Your Honor, with regard to the
6 motions for upward departure, the first basis that we
7 articulated is 5K2.17 in that the Defendant possessed a
8 semi-automatic firearm capable of accepting a large
9 capacity magazine in connection with a crime of violence.

10 Of course, this Court has already ruled that Mr.
11 Huff has been convicted of a crime of violence. So the
12 question is: Did he possess a semi-automatic firearm
13 capable of accepting large capacity magazines in
14 connection with his offense here.

15 There is evidence in various ways here and a lot
16 of it, in addition to the physical evidence at trial,
17 comes from Mr. Huff himself. We heard a tape at trial
18 where Mr. Huff was in a restaurant called Donna's
19 Restaurant in Madisonville on the day of the crime, and he
20 is regaling the crowd and telling them about how he's got
21 an AK-47 in his truck and he's got 300 to 400 rounds of
22 ammunition with it. We heard it in Mr. Huff's own words.

23 In addition to that, we have Mr. Huff testifying
24 at trial. And, of course, he knows there is a tape here
25 of him admitting to having the AK-47 in his truck. He

1 would be pretty hard pressed to deny that he had it. So,
2 when he testified, he admits that he had an AK-47 with him
3 on that day. He talked about that he didn't bring it on
4 April 1st, but on April 20th, he did have his AK-47.

5 He says he didn't have 300 to 400 rounds, he
6 minimizes that, but he did say something very important.
7 He said he had, I believe it was four clips of ammunition
8 with him that were with the AK-47. Those are 30-round
9 clips. I don't have the exact testimony, but I think it
10 was very clear from his testimony that he had several
11 clips of ammunition for the AK-47 with that firearm; and
12 that came from his own mouth, his own words, when he
13 testified at trial, Your Honor.

14 Clearly, they were -- and we know what type of
15 clips they were. Yeah. We don't have a picture of those
16 exactly that day, but we know the type of clips that he
17 had associated with that gun. Ammunition clips for an
18 AK-47 were seized from his house, they were seized from
19 his truck on the day of his arrest, and we know exactly
20 which type of clips they were. They were the 29 to
21 30-round clips.

22 I believe, again, that Mr. Huff's testimony made
23 that even more clear, I think, as far as how many rounds
24 he had on that. He was conceding that fact. Of course,
25 he didn't realize what he was saying and what the

1 implications would be for motions for upward departure and
2 that that can be a valid basis for a departure, Your
3 Honor.

4 So I think the evidence is very clear when you
5 look at the physical evidence here, when you look at Mr.
6 Huff's own statements, and you look at just the massive
7 amount of AK-47 ammunition that he had in his home, in his
8 truck. Clearly, I think it's clear that he possessed a
9 semi-automatic firearm, by his own words, that accepted
10 large capacity magazines and it was in connection with a
11 crime of violence. Certainly, that possession was in
12 connection -- he had it with him during the offense
13 itself. He had that AK-47, according to him, with him in
14 Madisonville that day.

15 Your Honor, then we look at the degree of the
16 Court, under that guideline provision, to look at the
17 degree which that type of weapon increased the likelihood
18 of death or injury under the circumstances of that case.
19 As far as contemplating the degree of departure, the Court
20 can factor that in. I think when you combine the firearm
21 and ammunition that Mr. Huff had, the AK-47 with the
22 ammunition that he had, and with this express intent to
23 take over the courthouse, to take over the city,
24 obviously, there was a potential for great harm. The
25 whole situation was fraught with the potential for

1 something bad to happen, and it well could have happened.

2 Had there been any type of misstep at all, there could
3 have been something that was very, very severe and tragic.

4 I think we know all too well with shootings that
5 have happened in Tucson just barely over a year ago when
6 Representative Gabby Giffords and five others were killed,
7 a number of others injured, we know from the Fort Hood
8 shootings, we know the type of harm that can be inflicted
9 by one person with an assault weapon like this with a
10 semi-automatic who has bad intent. Your Honor, certainly,
11 there was a great potential for serious harm to have been
12 inflicted.

13 Fortunately, there was a massive amount of law
14 enforcement there that day. In fact, even Mr. Green
15 characterized it in his own motion, his own sentencing
16 memorandum, there was a small army of law enforcement
17 there. They were there for a reason because they realize
18 what could have potentially happened there if they weren't
19 ready for it.

20 Your Honor, with respect to the disruption of
21 governmental function, §5K2.7, I first ask the Court to
22 recall the testimony of District Attorney Steve Bebb and
23 he testified that it was the tensest day he's ever seen.
24 He was coordinating about 100 law enforcement officers and
25 agents that day. Again, it's Mr. Green who characterized

1 it as a small army there. That's not typical. There was
2 evidence here, testimony here, that officers were
3 assigned, had special protective details for municipal
4 offices that day. And, yes, obviously, you can say,
5 "Well, that's part of the law enforcement efforts", but
6 when you have this type of massive response, something so
7 out of the ordinary, obviously, you are taking away
8 resources that could be possibly needed for other
9 instances, for other types of law enforcement matters.

10 Your Honor, we would submit to the Court that
11 it's not typical. There was very unusual circumstances
12 that day with the massive response and the special
13 assignments that had to be done and the special protective
14 measures that caused a disruption to governmental
15 functions.

16 Thank you.

17 THE COURT: Thank you.

18 Mr. Green?

19 MR. GREEN: Your Honor, I'll start first with
20 the last 2.7 that Mr. Theodore just spoke about.

21 THE COURT: That's fine.

22 MR. GREEN: The officer that just testified very
23 candidly said there wasn't a single office in the county
24 courthouse or in the city hall that shut down or was
25 affected in any fashion. The court continued to run that

1 day. There's just no evidence that the governmental
2 functions were disrupted.

3 What is very significant here, Your Honor, is
4 the Government wants to have enhanced punishment, an
5 upward departure from the sentencing guidelines, based on
6 decisions that the Government made that day. In every
7 case that I have looked at that interprets this particular
8 guideline, it's always talking about the conduct of the
9 defendant which wound up causing disruption to a
10 governmental function.

11 In this instance, taking the evidence in the
12 light most favorably for the Government, Mr. Huff made
13 some statements which alarmed government officials, but
14 then those government officials, as the officer just said,
15 they made the discretionary call to bring out a bomb dog.
16 They made the discretionary call to place snipers on
17 roofs. They made the discretionary call to bring in
18 whether it was 10, 20, 50 or 100 law enforcement officers.
19 To say that there may have been some disruption from
20 making a cop do what he's supposed to do, we don't
21 concede, number one, that there was. They are trained to
22 make people safe and to be there to keep people safe.

23 Secondly, these were not actions that Mr. Huff
24 took. For instance, he didn't storm the courthouse with
25 his AK-47s blasting away and they had to shut the place

1 down for a week to process a crime scene. It's very, very
2 different, Your Honor, when based on words he said or did
3 not say, they made the discretionary call that, "This is
4 what we feel like needs to be done." We think that that
5 takes it outside of that particular guideline.

6 As to 2.17, Your Honor, if we want to guess and
7 try to cobble together some of the evidence in this case,
8 I guess you could make an argument that a large capacity
9 magazine enhancement may or may not apply, but I'm going
10 to read the guideline.

11 "If the defendant possessed a semi-automatic
12 firearm capable of accepting a large capacity magazine in
13 connection with a crime of violence or controlled
14 substance offense, an upward departure may be warranted.
15 A semi-automatic firearm capable of accepting a large
16 capacity magazine means a semi-automatic firearm that has
17 the ability to fire many rounds without reloading because
18 at the time of the offense the firearm had attached to it
19 a magazine or similar device that could accept more than
20 15 rounds of ammunition or a magazine or similar device
21 that could accept more than 15 rounds of ammunition was in
22 close proximity to the firearm".

23 Well, for starters, one, we still don't concede
24 the fact that this was a crime of violence, and that will
25 be litigated before the 6th Circuit. But assuming

1 argument, or for purposes of this argument because the
2 Court has found that this particular offense is a crime of
3 violence, what is significant here, Your Honor, is Mr.
4 Theodore talks about the fact that his truck was searched
5 and his house was searched. They are very, very true
6 statements, Your Honor. However, that is excluding one
7 very important fact. The truck that was searched when he
8 was arrested was the camo truck, and that was not the
9 truck that he had on April the 20th. The black Oath
10 Keepers truck that he drove on April the 20th to this day
11 has not been searched.

12 His statements about there being 1 round, 50
13 rounds or 1,000 rounds of ammunition in that truck don't
14 add anything to this particular occasion. We have to
15 guess and speculate as to what he did or did not have
16 within the toolbox of that truck in order to be able to
17 apply this enhancement, and I don't think that's what the
18 law calls for. We don't believe that they have proven it.

19 THE COURT: Thank you.

20 Mr. Theodore, anything further?

21 MR. THEODORE: Just briefly, Your Honor.

22 It doesn't require speculation. All you have to
23 do is look at what the testimony of Mr. Huff was and the
24 evidence at trial, both the tape recording where he's
25 talking to people at Donna's Restaurant and his own

1 testimony with regard to having that firearm and having
2 the ammunition clips with that firearm at that time.

3 MR. GREEN: Briefly, in response to that, Your
4 Honor.

5 They can't have their cake and eat it too. They
6 have gotten an obstruction enhancement because they said
7 his testimony was not worthy of belief. So to now come in
8 here and say, "Okay. Well, we're going to believe him on
9 this but not when he says, 'I didn't make those
10 statements.'" They don't get to have it both ways, Judge.

11 THE COURT: All right. Thank you.

12 Let's switch then to the Defendant's sentencing
13 memorandum and motions.

14 Mr. Green, we'll hear from you, and then we'll
15 let Mr. Mackie respond.

16 MR. GREEN: Your Honor, we, obviously, would ask
17 the Court to rely upon all of the grounds even if I don't
18 specifically talk about them in my argument that are
19 included within the sentencing memorandum that we filed.

20 I'm going to touch upon --

21 THE COURT: The Court will do so and has read
22 everything that's been filed by both parties in this case.

23 MR. GREEN: I'm going to touch upon two or three
24 things that we talked about in the sentencing memorandum.
25 I will say from a personal perspective that this has been

1 one of the more interesting and challenging cases that I
2 have been involved in 25 years of practicing law.

3 Mr. Huff is an interesting individual. Mr. Huff is in
4 some ways a contradiction, and in other ways he is very,
5 very consistent in the way he has lived his life.

6 I think it's very significant when the Court
7 looks at the §3553(a) factors which specifically include
8 the history and characteristics of the Defendant, Mr.
9 Huff's entire life has been one that has been one of his
10 conduct and his actions speaking much louder than his
11 words. This is not a person who professes to be religious
12 and then there's no outward manifestations which would
13 support those claims or beliefs.

14 This is a person as in many, many of the letters
15 that Your Honor read that were attached to his sentencing
16 memorandum observed, this is a man who has been very, very
17 giving with both his time and whatever financial resources
18 he may have had at the time. As Your Honor read in the
19 materials we attached to our sentencing memorandum,
20 Mr. Huff and his wife purchased a home. I've been to that
21 home. It's a nice home in a nice subdivision in Dallas,
22 Georgia. It's the type of community where a lot of
23 people, if they had an extra 30, 40 or \$50,000.00, the
24 first thing that they would want to do is figure out where
25 they could put a swimming pool in their backyard. That

1 wasn't the situation with the Huffs.

2 Mr. and Mrs. Huff spent the money that they
3 could come up with to build an addition off the back of
4 their home. That addition didn't house a media room,
5 rather it housed a meeting room. That meeting room, Your
6 Honor, on a weekly basis, as those letters told the Court,
7 brought in anybody who wanted to come in. Whether it was
8 5 people, 15 people or 20 people every week, the Huffs had
9 people in for Bible studies every Friday night; and that
10 was at their expense. If it cost \$100.00, \$150.00 to feed
11 everyone there for as long as they wanted to stay there,
12 whether it was until 10:00 in the evening or 3:00 in the
13 morning talking about the Bible and discussing the Bible
14 and what they've read, they did it at their own expense
15 and out of their own pocket. That house, unfortunately
16 because of Mr. Huff's current predicament will probably no
17 longer be the Huffs. It's going to be owned by a bank
18 again in the very near future.

19 Mr. Huff is an individual while -- you know, we
20 referred to him during the course of this trial and I
21 think the facts fit, he is a very, very passionate
22 individual about what he believes in. He can be very,
23 very vocal when he has a passionate belief about
24 something, but that, to me, Your Honor, is the ultimate
25 irony in this case.

1 The Government wants to imprison him not because
2 of what he did in Madisonville that day but because of
3 what he said. Where we have an individual whose whole
4 life is characterized by his actions dictating who he is,
5 as the example I just gave about housing the Bible studies
6 proves on a repetitive and daily and weekly and monthly
7 basis.

8 Secondly, Your Honor, this case has been
9 challenging for me. I'm not as smart as these lawyers
10 over here. I kind of look at facts when I see them in a
11 case and I say, "What has my client done? What are the
12 bad facts that I have to deal with here? What has he done
13 that puts us before this court", whether it's across the
14 street or over here. When I look at these facts, I still
15 have to scratch my head a little bit.

16 I understand a jury has said what they've said,
17 they said he's guilty of this offense; but when you step
18 back once again and look at all the facts in this case, he
19 can legally possess guns, he can legally assemble, he can
20 legally protest what he believed to be the conduct of
21 governmental officials in Madisonville in Monroe County in
22 arresting Mr. Fitzpatrick and what he and others perceived
23 to be corruption. We may not agree with that, but that's
24 kind of what makes this country what it is. He has the
25 right to say what he believes in. He has the right to

1 protest against that which he doesn't believe in and feels
2 is not right. He had the right. He had a carry permit.
3 He had taken the lawful steps he had to take to legally be
4 able to carry a firearm.

5 Was it the smartest choice in the world to go to
6 Madisonville that day toting a .45 on his hip? Probably
7 not.

8 Was it the smartest choice in the world to run
9 his mouth about having an AK-47 in the toolbox of his
10 truck? Probably not.

11 But if we're going to incarcerate everybody that
12 says stupid stuff, I'm going to be at the front of the
13 list, and there is not going to be a person who would be
14 safe.

15 The other thing that I guess I just can't get my
16 head wrapped around, Your Honor, is if we give the
17 Government the benefit of every fact in this case, just
18 for purposes of this argument -- and we're certainly not
19 conceding that. We'll let the 6th Circuit decide what is
20 and what isn't -- but if we give them the benefit of the
21 doubt, what if they say the next time, if there ever is
22 another one, an 18 U.S.C. §231 punishment, or prosecution,
23 and that person is convicted, what can they say for that
24 next defendant?

25 They're telling this court that this statute

1 calls for five years and this man deserves every day of
2 it. They're telling this court that he is the worst of
3 the worst. They're telling this court that even though he
4 made the decision to put his sidearm off his hip, which
5 those law enforcement officers couldn't force him to do,
6 he made that decision to put it in the toolbox and never
7 took it out. Even though he made the statement the night
8 before to the FBI, "Hey. If there's a problem, tell me.
9 I won't go up there", even though he came back a week
10 later after having done nothing in Madisonville and was
11 recruiting law enforcement -- not other militia members,
12 not other yayhoos off the streets, not gang members out
13 from East Knoxville -- law enforcement officers who are
14 trying to help him with his cause, they are saying he is
15 the worst of the worst, that he deserves every day this
16 court can give him under this statute.

17 What is left for the next one? What is left for
18 the next 18 U.S.C. §231 prosecution where that defendant
19 doesn't keep the gun in his truck, where he gets out and
20 does try to arrest a citizen, where he gets out and does
21 try to arrest a government official? What's left for him?
22 It's not going to be more than what this citizen gets.

23 THE COURT: Although, we have to be mindful,
24 don't we, that in looking back at Count 2 for which the
25 Defendant was found not guilty was carrying a firearm

1 during or in relation to a crime of violence, which, if
2 the Defendant had been found guilty of that crime, I don't
3 have that information in front of me, but I believe he
4 would be facing, perhaps, 60 months on top of the
5 potential 60-month sentence in this case.

6 MR. GREEN: I'm not trying to be a smart aleck,
7 Your Honor, but ifs and buts were candy and nuts, every
8 day would be Christmas. I mean, what we're dealing with
9 is the statute that is before the Court --

10 THE COURT: I know, but you're dealing with ifs
11 and buts as well. Your argument is if he had taken the
12 gun out, if he had not taken it off the side --

13 MR. GREEN: With all due respect, Your Honor, my
14 argument is for purposes of this statute and this statute
15 alone, if it's utilized again, what is left?

16 If, in fact, just having the intent and having
17 guns constitutes a crime of violence which gets your
18 guideline ranges just ratcheted up the way these have
19 been, I mean, what's left? I mean, everybody is going to
20 get five years here. How do we distinguish between this
21 person who took the steps that he took that day to make
22 sure there wasn't violence, to make sure there wasn't a
23 problem in Madisonville, to make sure that he didn't move
24 the wrong way towards that gun on his hip and all of a
25 sudden the snipers start blasting and people get killed?

1 What's left?

2 He's the worst of the worst, if you believe the
3 United States. There can be no greater punishment under
4 this statute, if they have their way.

5 I want to talk as well, Your Honor, about
6 disparity, and that is a specific consideration under 18
7 United States Code §3553(a). Disparity comes in many
8 shapes and forms. I have a very, very difficult time,
9 Your Honor, understanding how, when we think back to kind
10 of how Mr. Huff got embroiled in this whole mess to the
11 extent that he did, Mr. Huff didn't start this, Your
12 Honor. Mr. Huff may have said some things which alarmed
13 some bank employees, but all of that stemmed from what
14 Walter Fitzpatrick did.

15 Walter Fitzpatrick has never faced the first
16 federal prosecution. Walter Fitzpatrick was prosecuted in
17 the state system, as was Mr. Huff. Walter Fitzpatrick who
18 authored the citizens' arrest warrants. Walter
19 Fitzpatrick who was the proverbial stick that stirred the
20 pot and continued to stir the pot did less than six months
21 in custody. The United States of America wants this court
22 to impose 60 months, 10 times as much punishment on this
23 citizen as Mr. Fitzpatrick suffered.

24 And it's not just Mr. Fitzpatrick, Your Honor.
25 There's others. Later today, an individual named Kenneth

1 Roy Wade will plead guilty before Judge Phillips. An
2 Affidavit of Complaint, sworn affidavits, in his court
3 file on the ECF System says that Mr. Wade threatened a
4 sitting Social Security Judge, threatened him with murder,
5 admitted to the FBI that he waited on that judge and
6 planned the shooting, but that judge never came out,
7 Mr. Wade faces between 24 and 34 months in custody; but
8 the Government says that Darren Huff deserves 60.

9 Franklin Delano Jeffries, II went to trial.

10 Mr. Jeffries was convicted of posting a video on You Tube
11 which threatened the life of Chancellor Mike Moyers as
12 retaliation for decisions that Chancellor Moyers had made
13 in a custody dispute involving Mr. Jeffries' son.
14 Mr. Jeffries was sentenced after a trial to 18 months in a
15 federal penitentiary, but Darren Huff deserves 60.

16 United States of America vs. Glendon Llewellyn
17 Swift. Mr. Swift called United States Representative Eric
18 Cantor's office in Washington, threatened to rape
19 Representative Cantor's daughter, threatened, among other
20 things, to kill Representative Cantor's wife and referred
21 to him in a diatribe, expletive-laced messages on two
22 occasions as a "Jew boy". Mr. Swift received a punishment
23 of 13 months, but Mr. Huff deserves 60.

24 United States of America vs. Jimmy Ray Brown, he
25 was indicted for being a felon in possession. Immediately

1 after he was released -- and, obviously, we know he is a
2 felon because he is a felon in possession, unlike Mr. Huff
3 who had no record. Jimmy Ray Brown was indicted for being
4 a felon in possession. After release, he went to the
5 agent's family, to his home, and confronted his family and
6 made certain statements which were construed as being
7 threats and threatened retaliation for past action, Mr.
8 Brown received a sentence of 37 months; but Mr. Huff's
9 country tells him he deserves 60.

10 Your Honor, we can all agree to disagree about
11 certain things, and Mr. Huff and I have had our
12 differences. I don't think that's any great secret. I'm
13 probably not at the top of his Christmas card list.
14 That's no great secret. But what the United States of
15 America is doing in this case, with all due respect -- and
16 I have great respect for the people behind me -- is a
17 little bit scary. We have an individual who had a
18 conversation with the FBI the night before where he told
19 them everything he was going to do the next day, what he
20 would have with him, what their plans were and who made
21 the statement that he wouldn't go if there was a problem.

22 But rather than say anything, "Hey. Mr. Huff,
23 maybe you shouldn't be doing that", they laid in the wings
24 and they waited. They watched him. They watched him
25 leave Georgia. They watched him cross the state line.

1 Now they want to put him in prison for five years. They
2 watched him do nothing in Madisonville that day --
3 nothing. He didn't hurt anybody and they want to put him
4 to prison for five years for speaking out.

5 Who's next?

6 Who's next?

7 If this Court wants to look at some really
8 ill-advised things that were said and some very poor
9 choices about the luggage, for lack of a better way of
10 putting it, that he brought with him to Tennessee on April
11 the 20th, I guess if you want to look at that in
12 isolation, you can hammer him and you can give him five
13 years. But if you want to look at everything he has done
14 in his life and if you want to look at all the facts in
15 this case, yeah, this could have been a whole lot worse --
16 could have been, should have been, would have been. It
17 could have been a whole lot worse, but a big reason that
18 it wasn't, Your Honor, is because of the decisions he
19 made.

20 I just, with all due respect, don't believe he's
21 the worst of the worst.

22 THE COURT: Thank you.

23 Mr. Mackie?

24 MR. MACKIE: Your Honor, I do think it is
25 appropriate to start where Mr. Green, in a sense, left off

1 and discuss why this is a case that fully warrants a
2 guideline sentence that is a just and appropriate
3 punishment.

4 On the basis of what Mr. Green was just saying,
5 let's step back and think about this case. Let's use
6 reason, not emotion, and let's ask what his client has
7 done, what has the Defendant done, and why is a guideline
8 sentence appropriate.

9 Mr. Green, just before I go into the issues
10 about the variances and why I think they do not apply why
11 I think it's a guideline sentence would, in his eloquent
12 fashion, try to make this a First Amendment case. His
13 client, the Defendant, Mr. Huff, certainly talked the
14 talk, but he also walked the walk. He took actions beyond
15 talking. The You Tube case, you could throw all sorts of
16 things, if somebody makes remarks and, yes, you can make
17 an interstate call that threatens someone and that's a
18 crime, but the sentence is different because it's a
19 different crime.

20 Just for one moment, just to put this to rest
21 under the §3553(a)(7), when you're talking about
22 disparity, and let's put this to rest, it's a question
23 about defendants with similar records found guilty of
24 similar conduct. This is different. So we're not going
25 to say if you pick out any cherry-picked case and say,

1 "This sentence was different", that's different conduct.
2 It's not words, it's actions.

3 So let's step back and think what has the
4 Defendant done and why, in fact, that the guideline
5 sentence that the Court outlined in its recent memorandum
6 and order and in the presentence report makes perfect,
7 rational sense and why there should be a variance and why
8 this should be applicable.

9 We are going to go over the reasons for the
10 variance in a moment and why it should; but let's just
11 overview and let's say, "What is the base offense?
12 Transportation of firearms, 2K2.1." That is exactly what
13 happened. This is not a stretch. This is not words.
14 This is what happened. He transported weapons across
15 state lines. There is no question about that, and that is
16 certainly what the jury found.

17 Going on to what the Court found, possession of
18 a weapon in connection with another felony. He didn't
19 just carry a gun for no purpose. He did it for the reason
20 the jury found, which was to transport that weapon in
21 furtherance with the intent to further a civil disorder.
22 That is logical. That is exactly what happened. And what
23 was it? It was not words. It was action, action that had
24 already been taken out.

25 I don't think we have to think far back to

1 remember that he was carrying multiple copies of
2 Government Exhibit 2 and 3. Government Exhibit 2 is a
3 Citizen's Arrest Warrant, and Government Exhibit 3 is the
4 Affidavit of Criminal Complaint. This was action. This
5 was not talk.

6 We already know from April 1st there was an
7 effort to actually move into a courtroom -- this, of
8 course, was not through the conduct that was charged, but
9 it certainly shows what the intent was -- into a courtroom
10 to execute an arrest warrant. This was intent. He had
11 the intent that day if he thought it was necessary to do
12 this very same thing, which would be, in a sense, the
13 aggravated assault, which the Court found.

14 Why do we say that? Well, as Mr. Green was
15 saying, I would agree, the Defendant closely held his
16 beliefs and those beliefs are reflected in here, that he
17 believed these persons, both local officials as well as
18 national officials, but the local officials were domestic
19 enemies. What was he going to do about it? He was going
20 to arrest them. That was his intent. He expressed his
21 intent and he took actions to fulfill that intent.

22 I quote the arrest warrant that he was carrying,
23 doctrine of non-resistance condemned, that the Government
24 ought to be instituted for the common benefit, the
25 doctrine of non-resistance against arbitrary power and

1 oppression is absurd, slavish and destructive to the good
2 and happiness of mankind. This was not a peaceful
3 protest. The doctrine of non-resistance is absurd. That
4 was his view and he was taking actions to enforce that.

5 Criminal Complaint to commit treason, to commit
6 levy of war against the United States. This is something
7 he had a deeply held belief was a crime that he was going
8 to act upon. So, stepping back, that is the aggravated
9 assault aspect. It makes perfect sense. He was seeking,
10 in his mind, to go over there and if the facts and the
11 circumstances warranted, he was going to arrest somebody.
12 That's more than minimal planning, no question about it.

13 We already know, as the Court has heard at trial
14 and has found on April 7th he had a planning meeting for
15 Phase 2. It makes perfect sense that this was not an
16 impromptu something. It wasn't just spouting off on a
17 moment. This was something he thought about, he planned,
18 and he carried it out. And he had a dangerous weapon that
19 was threatened as the Court found. The presence of a
20 weapon, whether or not he is carrying it around, holding
21 it to the sky, shooting it into the sky or easily
22 accessible, he had the presence of that weapon. That all
23 makes sense. It makes perfect sense because that's
24 exactly what happened in this case.

25 The guideline punishment that the Court is

1 looking at is not, as Mr. Green argues, disproportionate
2 and oppressive when it's considered in terms of the actual
3 conduct of the Defendant. This is not a case about
4 unlawful thoughts as he says, "The only thing I did", and
5 I think he believes it, "is I just had these thoughts and
6 I drove across the state line with a lawfully possessed
7 weapon. Thinking bad thoughts while driving around
8 legally with guns, I shouldn't be punished for that."

9 He also asked for a variance because he did not
10 have knowing and sustained intent. He says, "Well, you
11 know, the statute is so obscure." I think it's also been
12 referred to, if not by him, as archaic. It's not. I
13 mean, it was passed probably before the recent Kardashian
14 wedding, but it doesn't mean that it's obscure or obtuse
15 or any of that. It has been in place for a reason to stop
16 the conduct that the Defendant was undertaking, which was
17 as it says, to transport weapons interstate with the
18 intent -- you have to find the intent and that was found
19 in trial -- to further a civil disorder.

20 He also argues that he would be -- the Defendant
21 would be subject to abuse in prison because of his
22 beliefs, the coon argument, that because he has notoriety
23 or expressed some sort of extremist or white supremacist
24 view, that would make him more vulnerable. I don't think
25 there's any basis for that.

1 So let's talk about specifically these arguments
2 for variance. Let's first just address these, what I
3 consider the non-core secondary arguments, you know, the
4 subject to abuse in prison, the disproportioned others not
5 charged, whether it be Fitzpatrick or someone else, the
6 loss of civil rights and the fact that he's a religious
7 person.

8 We have already addressed the disproportion
9 issue. You're comparing apples and oranges there. This
10 is not the issue.

11 As far as him being religious, certainly there
12 is nothing wrong at all to be held against him being
13 religious. I would say that being religious can be a
14 basis both for good but also for extremism. Closely held
15 beliefs in that regard can prompt someone to believe that
16 the law in place is not appropriate because there is a
17 greater moral or religious view. Being religious in and
18 of itself, there's nothing wrong with that. If you're
19 using your personal-held beliefs in order to enforce what
20 you think is right against the existing law, then that is
21 a problem.

22 The core arguments in this case that the
23 Defendant makes is that the punishment under the guideline
24 sentence would be disproportionate and oppressive, they
25 didn't have a knowing intent, and it ultimately does not

1 promote respect for the law. I would say to the Court it
2 is these very same factors that warrant a guideline
3 sentence. When we look at §3553(a), we take the guideline
4 sentence -- of course, as we know, post-Booker being
5 advisory, but that is the starting point. So you start
6 there and you say within the §3553(a) factors, it's
7 exactly where we should be at in the guideline sentence --
8 the nature and circumstance of the offense and the history
9 and characteristics of the defendant.

10 We have already emphasized that this is a case
11 of actions, not words. We know that it started out on
12 April 1st with an attempt to arrest Mr. Huff in
13 conjunction with Mr. Fitzpatrick, Gary Pettway, Grand Jury
14 Foreman. The second meeting on the 7th, they're planning
15 the future arrests, Phase 2. As the Court has noted Mr.
16 Huff in his own words, "I'm on the higher end of the
17 enforcement side of this whole thing. I'm not Mr.
18 Rhetoric. I'm not Mr. Theoretical. I'm Mr. Enforcement."
19 That's exactly what he was. That's what he was doing that
20 day.

21 Reflect the seriousness of the offense, promote
22 respect for the law and just punishment for the offense.
23 This law, if one stepped back and looked at it, is
24 designed to do exactly this, to prevent violence. This is
25 to stop something before it happens when there is evidence

1 of intent.

2 When you look back to some of the reported cases
3 on §231(a), and this case was §231(a)(1), United States
4 vs. Featherston cited in our earlier briefs, 461 F.2d 1119
5 in the 5th Circuit, it's talking about how the intent is
6 necessary. The requirement of intent in this statute
7 narrows the scope of enactment, that's the statute, by
8 exempting innocent or inadvertent conduct from its
9 proscription.

10 In this case, it was a black, African militant
11 movement, BMM. A person was charged with instructing
12 someone on how to prepare an explosive device. Not even
13 carrying it, not putting it out -- "Here is how you do
14 it." That is instruction. You say, "Oh. Well, those are
15 just words." Well, this is what the statute is intended
16 to prevent, not the actual explosion or not the actual
17 shooting, whether it be the Tucson shooting or anything
18 else. It's to stop that from happening with sufficient
19 evidence of intent.

20 In this case also, under §3553(a), we talk about
21 adequate deterrence to criminal conduct by others and to
22 protect the public from further crimes of this Defendant.
23 I think it goes without saying, shall we say, that there
24 are others out there. There are militia groups, there are
25 sovereign citizens, the people who you would call lone

1 wolves who may have these closely-held beliefs that these
2 are domestic enemies, that these are enemies of the state,
3 that, you know what, that's the beast that needs to be
4 slain. This is what people believe and this is to deter
5 that kind of conduct where somebody is taking the law into
6 their own hands.

7 That was the point of Featherston, which was the
8 instruction on the explosive devices. It was also the
9 point of this law that was used in the Wounded Knee
10 situation. We cited that in the brief. Just to remind
11 the Court, this is where someone actually took over a
12 building, a post office, as Russell Means in the American
13 Indian Movement took over a building. There was a law
14 enforcement presence around it to try to keep it from,
15 shall we say, exploding. People were streaming in with
16 weapons to join the movement no more than as in
17 Featherston where the stated purpose of the demonstration
18 was to prepare the members of BMM for the coming
19 revolution. People were coming into Wounded Knee for the
20 purpose of joining in this civil disorder. That's what
21 the law was intended to stop, that particular action.

22 So, in this instance, do we have a basis for a
23 variance. Well, to begin with, of course, the guideline
24 sentence is above what the statutory maximum is. So,
25 certainly, if we're looking at the fact that the guideline

1 sentence, for the reasons that make perfect sense as I
2 outlined earlier, is 70 to 87 months; and if you go down
3 to the statutory maximum, which is appropriate, it's 60
4 months. Right away, that is, in a sense, a statutory
5 variance. But is that a just and fair sentence?

6 Absolutely, Your Honor. Absolutely. Because Mr. Huff
7 decided in that time, in a sense, to take the law in his
8 own hands.

9 In this country, we are a land of law. This is
10 a country of law, not of power. If you decide, if any
11 person decides to take the law into their own hands -- I
12 know. Let's disregard the speed limit. Let's start
13 there. Let's start doing this because I don't think it's
14 right. I have a personally held belief that it's right.
15 Or let alone I have a declared domestic enemy that I think
16 should be arrested. This is not a question here of
17 enforcing an overbearing, draconian -- I think was the
18 word -- law and order. This is trying to promote peace
19 and order.

20 Is it an adequate deterrence? Does the
21 variance -- in the terms of the variances we have, if
22 there are variances that were argued, does that provide
23 adequate deterrence to criminal conduct of other persons
24 or this Defendant? This Defendant, I think, still to this
25 day believes he did absolutely nothing wrong and he would

1 do it again if he could. I think if he is given, in a
2 sense, time served and probation, which I think is what
3 they're asking for, he goes out there, "You know, I didn't
4 do anything wrong and I would do it again because I'm
5 right." Does that promote respect for the law? Not in
6 the least. Not in the least.

7 If a judge makes a ruling, if a statute is
8 passed or a judge issues a ruling and says, "Thou shall
9 not do this because it's against the law", we live in a
10 society where people voluntarily comply with the law. If
11 they don't, then they should be prosecuted. As the famous
12 saying from Andrew Jackson's era, "The judge issued the
13 order. Let's see him enforce it."

14 We don't want to be a nation where everyone
15 wants to have the force of guns to keep law and order. It
16 is because people know that this is the established rule.
17 We do not convene our own Grand Jury, we do not write up
18 our own criminal complaints and affidavits, and we do not
19 go out and arrest people that we don't like for whatever
20 reasons because that is not what this nation is about. If
21 the conduct in this case is not met with the appropriate
22 punishment, it will undercut respect for the law. We need
23 to promote respect for the law by showing a just and fair
24 punishment, which in this case is the guideline sentence.

25 It is perfectly logical, if one goes through it

1 and looks at the way it was, in a sense, put together,
2 transported a weapon with the intent to commit a civil
3 disorder, you have that possession, you have the planning.
4 All of those issues that the guidelines call for above the
5 statutory maximum is for a reason. It's not just
6 arbitrary. It's for a reason.

7 The guideline sentence of five years is a just
8 and fair sentence both for the Defendant and for the
9 public interest for the reason, if nothing else, that it
10 meets the criteria set forth by Congress to deter future
11 conduct of this nature of which there are unfortunately
12 many out there who see nothing wrong with going and
13 arresting who they believe are declared domestic enemies.
14 To promote respect for the law and to send a message both
15 to this Defendant for his future conduct in life and to
16 others and to the public that in order to have peace and
17 order one must abide by law and order.

18 The Defendant took the law into his own hands,
19 in his view, and it should be appropriately and justly
20 punished. The guideline sentence is absolutely
21 appropriate. All the bases of the variance that the
22 Defendant argues does not have merit. The appropriate and
23 the just punishment in this case would be a sentence of
24 five years.

25 THE COURT: All right. Thank you, Mr. Mackie.

1 Mr. Green, anything further?

2 MR. GREEN: No, Your Honor.

3 THE COURT: All right. Just to be clear, we
4 argued motions but also obviously addressed sentencing
5 factors. Does counsel for either party wish to in any
6 further respect address the subject of sentencing in this
7 case?

8 MR. GREEN: Not related to sentencing, Your
9 Honor. We have stated our position and what we believe
10 the sentence should be in the sentencing memorandum.
11 Obviously, Mr. Huff wishes to allocute and has some things
12 to say before the Court passes sentence.

13 THE COURT: Mr. Theodore or Mr. Mackie, anything
14 further?

15 MR. THEODORE: Your Honor, the only thing I
16 would say is I just wanted to respond briefly to what
17 Mr. Green was talking about as far as the Government's
18 conduct being scary here. I think Mr. Mackie dealt with a
19 lot of things. He uses the term "obscure" and, of course,
20 there is nothing ambiguous or vague about the statute he
21 is charged under. It's designed to protect against the
22 exact type of conduct that Mr. Huff was involved with.

23 Then he talks about, "Oh. This is a little
24 scary what the Government is doing." There is nothing
25 scary about prosecuting this type of violation when he has

1 the type of intent and the capabilities that he had. I'll
2 tell you what is scary -- and it's not a little scary.
3 It's a lot scary -- it's a person like Mr. Huff who
4 characterizes himself, it came out at trial, as a
5 potential domestic terrorist. That is a term that came
6 out. He actually had business cards put out where he
7 characterized himself as a potential domestic terrorist.
8 He embraced that term. He embraced it. He wanted to be
9 characterized that way. He was proud of it.

10 What is scary is somebody who calls themselves a
11 potential domestic terrorist, then goes to a city,
12 expresses the intent to go take over the city and goes
13 there with an AK-47 and 300 to 400 rounds of ammunition,
14 according to him. That's not a little scary. That's a
15 lot scary. That's exactly why there was the law
16 enforcement that there was. What is scary is when
17 somebody who characterizes themselves as a potential
18 domestic terrorist links up and joins other fellow
19 extremists and they go down with the intention of
20 arresting public officials.

21 Of course, we know his statement all too well.
22 "Yep. I fully intend to proceed with those citizens'
23 arrests. I've got my .45 because ain't no government
24 official gonna go peacefully."

25 That's what is scary, Your Honor. His conduct

1 is scary in this case. There is an appropriate statute
2 and an appropriate guideline range.

3 Thank you.

4 THE COURT: Thank you.

5 Mr. Green?

6 MR. GREEN: I'm going to respond to that, Your
7 Honor.

8 THE COURT: Okay.

9 MR. GREEN: Maybe Mr. Theodore's a bit braver
10 than I am, but what I find very scary, Your Honor, is the
11 right to have different viewpoints and different
12 viewpoints of whether or not there is something wrong and
13 amiss in a particular municipality and government, somehow
14 that gets translated into, "We need to put this man in
15 prison for as long as we can possibly put him in prison."

16 I don't agree with him. I haven't agreed with
17 him from Day 1. He and I have had many, many passionate
18 arguments about any number of different subjects, but I
19 will stand here and talk until I can talk no more
20 defending his right to have those beliefs. What is scary
21 to me, Your Honor, is that what is scaring everybody,
22 according to the Government, is what he says. They keep
23 referring back to what he says and pieces of paper that he
24 was carrying. He didn't do anything when he got to
25 Madisonville, but they want this court to give him every

1 single day that this court can give him under the law.
2 That is scary.

3 THE COURT: All right. Thank you.

4 The Court appreciates the arguments offered by
5 both counsel or all counsel for the parties in this
6 action.

7 Next, Mr. Huff, if there is anything, sir, you
8 would like to say on your own behalf before sentence is
9 imposed, then I would invite you back up to the lecturn.
10 You can discuss that with your counsel if you would like.

11 If you would, sir, would you like to make a
12 statement?

13 MR. HUFF: Yes, sir.

14 THE COURT: If you would come back up to the
15 podium then along with your counsel, please.

16 Go ahead.

17 MR. HUFF: I actually had a prepared statement
18 and I believe that a lot of the things were covered, but
19 there were a few things that were stated by the Government
20 that I would like to address if that's okay. So I'm not
21 really prepared, but I'll try and wing it as best I can.

22 THE COURT: Go ahead.

23 MR. HUFF: The obscure statements, the archaic
24 statements that they say that the defense counsel is
25 bringing up is also being brought up by the mainstream

1 media who are calling this an archaic and obscure statute.
2 No one can find anyplace where it's been used before. I
3 would have to believe that as well as records are
4 maintained, at least since 1968, there would be a record
5 somewhere if it had been so that we could have some case
6 law.

7 Nevertheless, I was privileged to be a part of
8 this regardless of the outcome because I wanted to bring
9 things in open court. Unfortunately, in my opinion,
10 things that I would rather have come out didn't make it.
11 But that being said, everything about this case has gone
12 to what my intent was; and, in that regard, some things
13 had come out, but I don't know that the pieces were
14 necessarily put together.

15 I think the episode at Wounded Knee was brought
16 up and how they were training people to, you know, make
17 bombs for the coming revolution. I would be curious how
18 many of those participants actually sought out the
19 assistance of law enforcement as I did.

20 As was testified, when the FBI came to my house
21 the night before, I told them everything. I told them
22 what we intended to do. I told them that I intended to go
23 armed as was my right. The Second Amendment to the United
24 States Constitution guarantees me that right.

25 It's my understanding that the Supreme Court has

1 also ruled that it is an individual's right not a
2 privilege. But that being said, I also subjected myself
3 as one of these sovereign citizens that I'm being accused
4 of being, I subjected myself to the ATF or whoever does
5 the background checks to be able to apply and obtain a
6 Concealed Weapons Permit.

7 I have a driver's license. I have a real
8 license plate on my vehicle. I'm not a sovereign citizen.
9 But what concerns me the most is to find not that prior to
10 trial, the Government, through the Department of Justice,
11 the FBI and TBI in conjunction with the Tennessee Fusion
12 Center, had already produced and widely distributed a
13 26-page Power Point presentation entitled, "Suspicious
14 Activity Report Line Officer Training", where I have been
15 falsely labeled as a sovereign citizen and a potential
16 domestic terrorist.

17 My response, when I got the business cards made
18 up that was displayed through the trial, Mr. Jeffries just
19 presented them as though I had those prior to going to
20 Madisonville on April 20th. I only had those made up a
21 couple of months before trial after seeing the absurdity
22 that was being reported in the media. It was absolutely
23 absurd and bizarre to me that someone who has been
24 portrayed as badly as I have been portrayed, that I'm the
25 scariest guy currently in America, that I would be charged

1 with such a minor statute and have no criminal record to
2 speak of whatsoever. It was my understanding going
3 through trial even up to the conclusion when Mr. Jeffries
4 walked over to the defense table and it was agreed that
5 I'm a Level 1 or a Category 1, that this was like a Level
6 12 as far as the sentencing guidelines, which would only
7 look at 10 to 16 months that weren't even mandatory.

8 It defies my logic and I would have to say that,
9 you know, maybe my defense attorney is not as intelligent
10 as these attorneys. Well, I'm nowhere close to as smart
11 as my attorney. I haven't been to college. I've only
12 been to high school. But how did we go from a 10 to
13 16-month with no mandatory minimum of incarceration or
14 even probation to now, all of a sudden, if the Government
15 had their way, I would be in for 20 years.

16 It doesn't even make sense and it creates
17 questions in my mind that, you know, ultimately -- and I
18 will present the questions to the Court. Am I now going
19 to be sentenced for the charge that I was convicted on, or
20 am I to be sentenced the maximum allowed by law for
21 exercising my constitutional right to a jury trial or for
22 the sake of satisfying a perceived public opinion based
23 upon misrepresentations of the media; or is it because of
24 the pressure from the Department of Justice because they
25 already have me out in their educational series for law

1 enforcement that came out prior to trial where I was
2 already convicted in their mind and being used as a
3 national example to train law enforcement officers, in
4 other words, putting a target on my back personally
5 anytime I encounter a law enforcement officer?

6 So I was already convicted prior to trial so
7 that if somehow you were to allow me off with time served
8 and probation, they would then look bad and have egg on
9 their face once again.

10 When I went to Madisonville that day, as was
11 stated, everybody knows, the FBI was at my house the
12 evening prior. I didn't hide anything from them. When I
13 was stopped on the way to Madisonville, the officer,
14 Lieutenant Williams, I was there for 90 minutes as we all
15 saw, and I think a lot of us fell asleep watching the
16 video because it was so dramatic. At the end of that
17 video or at the end the traffic stop, Officer Williams, as
18 his statements say, he asked me, "When you get to
19 Madisonville, would you mind putting this .45 away?" He
20 testified that he asked me to put it away at the traffic
21 stop, but there was no such thing. He asked me to put it
22 away at the traffic stop -- when I got to Madisonville.

23 I asked him, "Are you going?"

24 And he said, "Absolutely. In fact, we'll be
25 following you."

1 So I said, "Great, because we just want to make
2 sure that everybody stays safe too. In fact, I'll put her
3 away right now."

4 As the dash cam showed, Your Honor, I opened the
5 toolbox of my truck, I put the .45 inside, and I drove to
6 Madisonville. Had I have listened to that officer, and
7 this to me is the most scary part because I feel that it's
8 only by God's grace that I'm even standing here talking
9 today, that officer used specific language. He's been an
10 officer for years. We saw him. He's a little older.
11 He's a lieutenant with the Judicial Task Force. He knows
12 what he's saying. What that man asked me to do was to
13 take that .45 out of its holster in the presence of
14 potentially Agent Scott Johnson who had served as a
15 sniper. The town was full of snipers. What would have
16 happened that day had I have listened to Officer Williams
17 and went to town with every lawful intention of honoring
18 what he had asked me to do and took that .45 out of that
19 holster intending to put it away as I was asked? But had
20 I have pulled that .45 out in front of those snipers, they
21 would have shot me dead in the street right then and
22 there, sir.

23 So my question is: What am I getting sentenced
24 for? For what I was convicted on or for all of this
25 speculation?

1 And that's all I have, Your Honor. I appreciate
2 your time.

3 THE COURT: Thank you. The Court appreciates
4 your making that statement.

5 Why don't we do this. Let's take about a
6 15-minute recess, and then I'll come in and pronounce
7 sentencing. I want to consider some of the matters
8 discussed in court today as well as doublecheck a few of
9 the things discussed as well.

10 Let's stand in recess until 12:00.

11 THE DEPUTY CLERK: All rise.

12 This Honorable Court stands in recess until
13 12:00.

14 (A brief recess was taken from 11:41 a.m. until 12:05 p.m.)

15 THE DEPUTY CLERK: All rise.

16 This Honorable Court is again in session.
17 Please come to order and be seated.

18 THE COURT: I want to thank everyone.

19 Again, the Court appreciates the statement
20 offered by the Defendant as well as the statements and
21 arguments both through their filings as well as in court
22 today offered by counsel for the Defendant and counsel for
23 the Government.

24 The Court also takes into consideration the
25 testimony of Agent Johnson and Detective Dockery offered

1 by the Government today as well as the letters of support
2 and other supporting material submitted on Defendant's
3 behalf.

4 In addition, the Court has carefully reviewed
5 the presentence report and the entire record in this case,
6 and in a manner intended to comply with the Sixth
7 Circuit's jurisprudence since the Booker case rendered the
8 sentencing guidelines advisory and Gall v. United States'
9 requirement that the Court make an individual assessment
10 based on the facts presented and adequately explain the
11 chosen sentence, the Court will explain its reasons for
12 the sentence to be imposed in this case. The Court will
13 discuss the advisory guideline calculation and the factors
14 discussed in 18 United States Code §3553 relevant to this
15 case. Based on those factors and consideration of the
16 guideline range as well as the statutory maximum and the
17 pending motions, the Court will impose a sentence
18 sufficient but not greater than necessary to comply with
19 the purposes discussed in 18 United States Code §3553.

20 First, with respect to the guideline range, and
21 that issue associated with the guideline range was
22 addressed in the Court's earlier ruling on the objections
23 to the presentence report and as set forth in Paragraph 49
24 of the presentence report, based on a total offense level
25 of 27 and criminal history category of 1, the guideline

1 range for imprisonment in this case is 70 to 87 months.

2 However, as there is a statutory maximum of 5 years, or 60
3 months, the restricted guideline range is 60 months.

4 Turning next to the §3553 factors beginning with
5 the nature and circumstances of the offense, the Defendant
6 has been found guilty by a jury of Count 1 against him,
7 that being transporting a firearm in commerce in
8 furtherance of a civil disorder in violation of Title 18
9 United States Code §231(a)(2). The specific offense
10 conduct and, certainly, again, the Court notes the jury
11 trial in this case and the Court having heard the
12 testimony offered by both sides at this trial, but the
13 offense conduct is summarized in Paragraphs 6 through 12
14 of the presentence report which the Court would
15 incorporate as part of its analysis of the nature and
16 circumstances of Defendant's offense conduct.

17 In brief summary, on April 2, 2010, Walter
18 Fitzpatrick was arrested in Monroe County, Tennessee while
19 trying to conduct a citizens' arrest warrant on Grand Jury
20 Foreman Gary Pettway. The Defendant became aware of the
21 arrest and the subsequent scheduled court date, and the
22 Paragraph 8 addresses various conversations, certainly,
23 again, which have been addressed by the parties' filings
24 and were by the Court at trial. But Paragraph 8 addresses
25 the Defendant's conversations on April 15, 2010 with

1 Robert Shank Longmire as well as with Erica Dupree, both
2 employees of Chase Bank in Hiram, Georgia regarding
3 Defendant's statements related to upcoming travel to
4 Madisonville.

5 Paragraph 9 addresses the interview of the
6 Defendant by the FBI at his home on April 19th.

7 Paragraph 10 addresses the traffic -- the
8 Defendant being stopped for traffic violations on Highway
9 68 in Sweetwater, Tennessee, again, which was a subject of
10 the trial testimony in this case, and various statements
11 made by the Defendant at that traffic stop.

12 Paragraph 11 addresses Defendant's conduct in
13 Madisonville and outside the Monroe County Courthouse on
14 April 20, 2010.

15 The Court referencing those various dates by
16 summary, again, being very familiar with not only the
17 trial testimony in this case but the specific offense
18 conduct constituting the nature and circumstances of
19 Defendant's offense conduct.

20 Turning next to the history and characteristics
21 of the Defendant. Again, addressing some of the matters
22 brought up in court today as well as in Defendant's
23 sentencing memorandum and the letters offered in support,
24 the Defendant, among other things, submits the themes to
25 his letters being that he is a deeply religious man and

1 that the Defendant is generous and compassionate toward
2 others. The Defendant's counsel amplified upon those
3 history and characteristics today, including talking
4 about, again, through the letters his giving of his time
5 and financial resources -- "his" being the Defendant --
6 the discussion of the Bible studies being conducted at the
7 expense of the Defendant and his wife on his property in
8 Georgia.

9 Further, with respect to the history and
10 characteristics of the Defendant, the Court does note that
11 the Defendant is, I believe at the current time, 42 years
12 old. He has a high school diploma as he discussed in
13 court today and is discussed in the presentence report.
14 The Defendant has a criminal history category of 1 with no
15 juvenile adjudications. His adult criminal convictions
16 consisting only of the April 1, 2010 date of arrest and
17 conviction in Monroe County, Tennessee Circuit Court
18 leading to the Defendant pleading nolo contendere and his
19 six-month jail sentence suspended to probation.

20 I believe he was initially charged with
21 participating in a riot, disrupting a meeting in
22 retaliation for a past action; and Counts 1 and 3 were
23 dismissed. The Defendant actually pled nolo contendere
24 for disrupting a meeting. Other than that arrest and
25 conviction history, the Defendant has minor traffic

1 violations as outlined in Paragraph 31 of the presentence
2 report.

3 The Defendant from a physical condition
4 standpoint relates, and this is discussed in his motion
5 for a variance, that he has sleep apnea and he is supposed
6 to use a CPAP machine at night. Further, he states that
7 he suffers from borderline high blood pressure, but the
8 Court is not aware of any medication the Defendant takes
9 in that regard.

10 Defendant reports no history of mental or
11 emotional problems and no history of treatment for such
12 problems. However, as the presentence report notes in
13 Paragraph 37, records received from the General Services
14 Administration, military personnel records indicate the
15 Defendant was honorably discharged from the Navy for
16 personality disorders and various evaluations and
17 treatment are discussed in more detail in Paragraph 38 of
18 the presentence report.

19 Other than some usage of marijuana 15 years or
20 more earlier, the Defendant states that he has no other
21 substance abuse issues currently, or at the time of his
22 arrest had no substance abuse issues.

23 The Defendant, again, as the Court noted,
24 reports he graduated from high school in Powder Springs,
25 Georgia in 1987 and also, again, is noted under military

1 service, Paragraph 42 of the presentence report, the
2 Defendant enlisted in the United States Navy in 1988 and
3 was honorably discharged in 1991 as previously discussed
4 by the Court.

5 The Defendant, according to Paragraph 43 of the
6 presentence report, appeared to have been unemployed at
7 the time of the jury verdict. He reported he was employed
8 with Crazy Native in Douglasville, Georgia for a portion
9 of time in 2010 and performed various jobs around that
10 shop, including reclaiming screens, clean up and masking
11 vinyl. From 2001 to 2008, the Defendant related that he
12 was self-employed installing outdoor lighting. Prior to
13 that time, from 1991 to 2001, he reports he was employed
14 with John Deere Landscapes in Kennesaw, Georgia.

15 With that background in mind, the Court turns to
16 the need for the sentence imposed to reflect various
17 factors, one of which is the seriousness of the offense.
18 While certainly there is some argument in this case in
19 terms of what Defendant did versus what he said, the Court
20 does conclude that the crime for which the Defendant was
21 convicted, while not -- again, as previously discussed and
22 it was discussed this morning, I know it was the first
23 instance in which the particular statute has been brought
24 before this court, the Court has previously found that
25 Defendant's crime of conviction, that is transporting a

1 firearm across state lines in furtherance of a civil
2 disorder, is a crime of violence.

3 The Court notes and the offense conduct
4 provisions note, among other things, that the Defendant
5 took his AK-47 and multiple rounds of ammunition with him
6 when he traveled to Madisonville from Georgia. The
7 Defendant admitted during his testimony at trial that he
8 took the AK-47 and the rounds of ammunition with him.
9 Also discussed was the tape recording of the Defendant
10 talking to a crowd at Donna's Restaurant in Madisonville
11 where he referenced, among other things, the AK-47 and the
12 rounds of ammunition in his truck. Certainly those items,
13 the firearm and ammunition, were introduced at the course
14 of the trial and again discussed here today via the
15 testimony offered by the Government.

16 The Court considers the need to promote respect
17 for the law and provide just punishment, again,
18 considering the Defendant's offense conduct and also
19 taking into consideration his relative lack of criminal
20 history but also, again, considering the nature and
21 circumstances particularly of Defendant's offense conduct
22 in this case as is already discussed in some detail by the
23 Court.

24 The Court considers the need to afford adequate
25 deterrence both specific to this Defendant, and in that

1 regard, again, the Court takes into consideration the
2 Defendant's offense conduct, also certainly the jury
3 verdict in this case, the seriousness of the Defendant's
4 offense conduct as well as his relative lack of criminal
5 history, and the Court is also mindful of the need to take
6 into consideration, and certainly the Government argues
7 for the Court to take into consideration, the need to
8 afford adequate general deterrence, that is to fashion a
9 sentence to act as a general deterrent to others similarly
10 situated to this Defendant who may contemplate the
11 undertaking of similar crimes in the future.

12 Certainly, given the nature and circumstances of
13 the Defendant's conduct as well as the Government argues
14 of the significant likelihood that the potential use of a
15 firearm would have substantially increased the likelihood
16 of death or injury under the circumstances in this case,
17 the Court is mindful of the need to fashion a sentence
18 that will afford adequate general in this case.

19 The Court considers the need to protect the
20 public from further crimes of this Defendant, again,
21 referencing his offense conduct in this case, but also
22 balancing that against the Defendant's relative lack of
23 criminal history.

24 The Court considers the need to provide the
25 Defendant with needed training, education and medical

1 treatment. In this case, the Court does not find a need
2 for substance abuse treatment given the Defendant's
3 relative lack of substance abuse history.

4 The Court does believe it appropriate as part of
5 any sentence fashioned in this case to recommend, in light
6 of the Defendant's history as discussed in the presentence
7 report, the Court will recommend the Defendant receive
8 mental health treatment while in the Bureau of Prisons as
9 well as participating in a program of mental health
10 treatment while on any period of supervised release.

11 The Court also believes, given the Court's
12 review of the Defendant's employment history, that the
13 Defendant would further benefit from
14 educational/vocational training opportunities offered by
15 the Bureau of Prisons. In that regard, both with respect
16 to medical treatment as well as training or
17 educational/vocational treatment, the Court would note
18 that although §3553(a)(2)(D) requires the Court to
19 consider the Defendant's need for educational or
20 vocational treatment -- excuse me -- the Defendant's need
21 for educational or vocational training, medical care or
22 other correctional treatment, the Court recognizes
23 pursuant to 18 United States Code §3582(a) that
24 imprisonment is not an appropriate means of promoting
25 correction and rehabilitation and that the Court may not

1 consider rehabilitative needs in imposing or lengthening a
2 period of confinement. Thus, in discussing and
3 recommending both mental health treatment as well as
4 educational and vocational training opportunities, the
5 Court is not intending to and is not imposing or
6 lengthening the Defendant's prison sentence to enable him
7 to complete a treatment program or otherwise promote
8 rehabilitation.

9 With respect to the need to avoid sentence
10 disparities and other factors discussed today, the Court
11 does note that the advisory guidelines are intended in
12 part to carry out the national policies articulated by
13 Congress, that sentences be uniform across the country to
14 the extent possible and be based on the offender's actual
15 conduct and history. The Court is going to address the
16 disparity argument raised by Defendant in more detail
17 momentarily in connection with discussion of Defendant's
18 motion for a variance.

19 Let me digress for just a moment here. Given
20 the Court's rulings relating to the offense conduct being
21 a crime of violence, let me just make sure from the
22 Government, other than the testimony offered today, you're
23 not aware of any victims that wish to present testimony in
24 this case today, are you?

25 MR. THEODORE: No, Your Honor.

1 THE COURT: All right. Thank you.

2 I'm going to turn next to the Defendant's
3 sentencing memorandum, which, again, the Court notes that
4 it's construed as a motion for variance; and as so argued
5 today, the Defendant raises several points in support of
6 his request in this case for a sentence of time served and
7 the Court will address each of those.

8 First, among other things, the Defendant argues
9 that he should receive a more lenient sentence because he
10 argues that he is less culpable than others, including
11 Carl Swenson, Jr. and Walter Fitzpatrick, and that he was
12 singled out for prosecution. However, the Court does not
13 find this argument to warrant a variance. It is not
14 relevant from the Court's viewpoint and from the viewpoint
15 of sentencing of this Defendant that the Defendant was the
16 only person involved with the events of April 2010 to be
17 federally prosecuted, and the Government notes the reason
18 the Defendant was prosecuted and others were not was
19 because the Defendant was the only person for which there
20 existed evidence of statements regarding an intent to
21 arrest public officials and take over the city with
22 respect to the date in question. Also the fact that Mr.
23 Fitzpatrick received a six-month sentence in State Court
24 does not support a variance in this case because Mr.
25 Fitzpatrick for State Court purposes was charged with a

1 different crime in a different jurisdiction, of course,
2 and was not involved in the events of April 20 for which
3 the Defendant was charged.

4 The Defendant also cited this morning through
5 counsel several other individuals that he suggests or
6 argues gives rise to a disparity argument in this case.
7 The Court has reviewed that argument as well as being
8 familiar with some of those cases specifically because
9 they were before this Court and, again, the Court does not
10 find that the disparity argument with respect to those
11 defendants to give rise to a variance in this case.

12 In general, looking at all the defendants, the
13 Court finds there has been argument and discussions about
14 words versus actions and certainly there were actions in
15 this case as defined by the offense conduct and the trial
16 testimony in this case. Many of the defendants cited by
17 defense counsel this morning involved words only or
18 minimal planning or not planning or actions to the level
19 that occurred in this case.

20 In the case of using something by way of
21 example, the case of Glendon Swift, which did involve a
22 sentencing before this Judge, there were threats made on a
23 telephone, over the telephone, to Representative Cantor's
24 office. The Defendant pled guilty and testified that
25 those threats, which in that instance were words alone and

1 certainly was serious offense conduct but were words and
2 not action, the Defendant allocuted at his sentencing that
3 it involved -- he was having alcohol problems, the Court
4 recalls the loss of his wife and it was a
5 spur-of-the-moment action, if you will, on his part.
6 Also, the Court recalls in the Swift case that the
7 13-month sentence that the Court gave in that case was an
8 agreed upon sentence or recommended sentence that was
9 agreed upon by the Government and the Defendant in that
10 case and presented to the Court.

11 The Kenneth Wade case cited, I believe, based on
12 the review of the file, is only at the change of plea
13 status today.

14 The Jimmy Brown case, which perhaps did involve
15 a little bit more action or more action than the Swift and
16 perhaps Wade case and other cases cited by the Defendant,
17 involved threatening statements. The Court actually has
18 pulled up some information here. In that case, the
19 Defendant pled guilty to being a felon in possession and
20 witness intimidation, respectively. The Defendant did
21 go -- did take action and go into the home of an agent
22 involved in the case where he asked to speak with the
23 agent's father. The Defendant informed the agent's father
24 he planned on suing the agent for wrongful arrest and the
25 agent told the Defendant's son to plant marijuana on his

1 property so the agent could come and find it to make
2 money. Unlike the Defendant here, it does not appear that
3 the Defendant had a gun in any respect in connection with
4 those threats, and the Court also notes with respect to
5 the Jimmy Brown that the Defendant's guidelines range was
6 37 to 46 months in that case based on a criminal history
7 category of 3 and an offense level of 19. The Court also
8 notes in that case the statutory maximum for the witness
9 intimidation charge was 3 years, which, of course, is 2
10 years below the statutory maximum for the offense of
11 conviction in this case.

12 The Court, while mindful and taking into
13 consideration the severity arguments raised by the
14 Defendant does not believe the cases where Defendant
15 cited, including that of the Brown defendant, to be a
16 sufficiently similar offense or sufficiently similar
17 conduct to give rise or such as to warrant a variance in
18 this case based on a disparity argument.

19 The Defendant also asserts he suffered and will
20 suffer extra judicial punishment in that he will lose his
21 right to possess a firearm and to vote, that he has been
22 expelled from certain organizations, that he has been
23 ostracized by many, that he will lose his home and that
24 there will be no place for him -- no place for him to
25 escape the notoriety resulting from this case, all those

1 arguments being made in the Defendant's sentencing
2 memorandum. However, those points are also unavailing
3 with respect to the request for a variance. These
4 considerations while being taken into consideration by the
5 Court, these considerations in various degrees are present
6 with respect to virtually every case that comes before the
7 Court, certainly in a majority of them, and would exist
8 regardless of whether the Defendant received a sentence of
9 probation, time served, 60 months in prison or somewhere
10 in between.

11 Defendant also argues he is susceptible to abuse
12 in prison, but, again, the Court finds this point does not
13 warrant a variance. The Defendant himself acknowledges
14 that his susceptibility is not as severe as in some other
15 cases, and the Court does not find that the Defendant may
16 be susceptible to abuse as a reason to vary in this case.
17 As the Government points out, the Defendant makes no
18 showing that he is in any different position than any
19 other defendant espousing a certain political view or
20 social belief and the Defendant merely states he has been
21 placed in solitary confinement because of his views and
22 because of his sleep apnea. The Defendant did not provide
23 any examples of abuse since he has been incarcerated, and
24 the Court will not speculate that he will be subject to
25 such abuse if it were to vary on this ground.

1 The Defendant also asserts that he has been
2 convicted under an obscure, or I believe the word this
3 morning used by the Defendant was an archaic statute and
4 that he did not have any knowing intent to violate the
5 law. The Court, again, finds this argument not to warrant
6 a variance. The Defendant in making this argument while
7 not necessarily denying responsibility for his actions
8 perhaps certainly is making an argument that runs counter
9 to the verdict of the jury in this. Also, even though the
10 statute may be obscure, the fact remains -- or even if the
11 statute were viewed as obscured from the standpoint that
12 it has not been utilized in this Court or another court to
13 any great extent, the fact remains the Defendant was
14 convicted of a jury of violating 18 United States Code
15 §231(a)(2) on the basis of the evidence submitted at trial
16 regarding not only the Defendant's words but specifically
17 the Defendant's actions in this case as outlined by the
18 Court previously as presented at trial and as discussed in
19 the presentence report.

20 The Defendant further argues that a guideline
21 sentence is disproportionate to the Defendant's actual
22 conduct, but the Court has already ruled on several
23 objections relating to this point and those rulings have
24 resulted in a restricted guidelines range of 60 months
25 imprisonment which the Court finds to be an appropriate

1 guidelines range taking into account the relevant conduct
2 of this case.

3 The Defendant also asserts that a guidelines
4 sentence will promote disrespect for the law. However, a
5 sentence of time served, the Court finds and as the
6 Government argues, could actually promote disrespect for
7 the law because many individuals may not be deterred from
8 engaging in conduct similar to that of the Defendant if
9 they were facing a short or non-custodial sentence. The
10 Government appropriately points out the Defendant was not
11 deterred after seeing Walter Fitzpatrick get arrested for
12 engaging not in similar conduct but somewhat related
13 conduct on April 1, 2010.

14 Finally, among other things, the Defendant
15 asserts based upon the letters submitted in his support,
16 and the Court has already addressed this somewhat, that
17 the Defendant submits via the letters as well as
18 discussion today that he is deeply religious and very
19 generous and compassionate toward others, and the Court
20 certainly takes that into consideration. However, the
21 Court also notes that many defendants who come before this
22 court share these same characteristics and such
23 characteristics, therefore, do not take the Defendant out
24 of the heartland of cases to which the guidelines apply.
25 Also, the Court would note that the guidelines while

1 advisory and not mandatory state that religion is not
2 necessarily relevant to the determination of a sentence.

3 In sum, none of the arguments presented by the
4 Defendant, either individually or collectively, warrants a
5 variance and the Court would therefore deny Defendant's
6 request for a variance. The Court will note, however, as
7 it does in other cases that it will take into
8 consideration all the points raised by the Defendant in
9 fashioning a sentence sufficient but not greater than
10 necessary to meet the purpose of sentencing. In other
11 words, while not giving rise to a variance, the Court will
12 consider the facts and arguments raised by the Defendant
13 in his variance request as part of the nature and
14 circumstances of the Defendant's offense conduct, the
15 Defendant's history and characteristics and overall
16 consideration of the §3553 factors in this case.

17 The Court next turns to the Defendant's pro se
18 filing. To the extent Defendant's arguments make an
19 additional request to vary or depart below the guidelines
20 range, the Court has considered those arguments,
21 including, among other things that the Defendant is being
22 punished for exercising his right to a jury trial and the
23 Defendant's argument that the Government used perjured
24 testimony to obtain a conviction. The Court finds such
25 arguments do not support a departure or variance below the

1 guidelines for the reasons discussed by the Court not only
2 today in connection with Defendant's -- in connection with
3 the Court's ruling on the Defendant's request for a
4 variance but also discussed in the Court's various
5 post-trial orders in this case.

6 Accordingly, to the extent the Defendant himself
7 makes a request for a variance or departure, the Court
8 will deny that request, but, again, will take Defendant's
9 arguments into consideration in fashioning a sentence
10 sufficient but not greater than necessary to meet the
11 purposes of sentencing.

12 Turning next to the Government's motion for an
13 upward departure, the Government requests the Court depart
14 upward from the sentencing guidelines pursuant to
15 sentencing guideline §5K2.17 and §5K2.7. §5K2.17, again,
16 relates to a semi-automatic firearm capable of accepting
17 large capacity magazines, and §5K2.7 relates to disruption
18 of governmental function.

19 The court acknowledges and takes into
20 consideration the parties' various arguments on the
21 applicability of the facts to those two guideline
22 provisions. However, in light of the Court's rulings on
23 the objections to the presentence investigation report,
24 which resulted in a restricted guidelines range higher
25 than the statutory maximum penalty of five years

1 imprisonment, the Court would find the Government's motion
2 for upward departure to be moot. In other words, the
3 Court finds the Government argument today, as Mr. Mackie
4 argued for a restricted guideline range of 60 months; so
5 the Court will deny the Defendant's -- excuse me, the
6 Government's motion as moot; but, again, as it does with
7 the Defendant's motion, it will take into consideration
8 the arguments offered in support and in opposition to the
9 applicability of those two provisions as part of the facts
10 and circumstances in this case that resulted in a
11 consideration of a sentence sufficient but not greater
12 than necessary to comply with the purposes of 18 United
13 States Code §3553.

14 In sum, the Court does not disagree with perhaps
15 both parties that this case is unusual in many respects.
16 The advisory guideline range is typically seen as, quote,
17 "a starting point", closed quote, and, often times, the
18 advisory guideline range is below the applicable statutory
19 maximum. Herein as discussed more fully in the Court's
20 May 2 order, no guideline expressly had been promulgated
21 for Defendant's offensive conviction. Again, this is the
22 first such type of case certainly to come before this
23 court. Thus, the presentence report and the probation
24 office utilized an analogous offense guideline resulting
25 in the advisory guideline range applicable to this case

1 and coupled with the statutory maximum resulted in a
2 restricted guideline range of 60 months.

3 Looking more closely at this case, we have a
4 Defendant with a limited criminal history, in fact, a
5 criminal history category of 1 which would perhaps tend to
6 argue against application of the statutory maximum. In
7 fact, Defendant so argued, arguing that the statutory
8 maximum should be reserved for the, quote, "worst of the
9 worst", closed quote. Also, from Defendant's perspective
10 in quoting from Defendant's sentencing memorandum, quote,
11 "We have before the court a citizen who awaits sentencing
12 not because he distributed illicit drugs to fatten his
13 wallet but rather because a jury believed he endorsed an
14 uprising by others which never occurred", closed quote.

15 On the other hand, the Defendant does stand
16 convicted by a jury of a crime not only which has been
17 categorized by this Court as a crime of violence but also
18 categorized by this Court based upon the discussion today
19 of his being 1, which certainly involves a serious offense
20 conduct. Again, the Court emphasizing not only the words
21 of this Defendant but certainly the actions of this
22 Defendant and ultimately his intent.

23 Also, in contrast perhaps to the Defendant's
24 position is noted in the Government's sentencing
25 memorandum, the Government states regarding the

1 Defendant's argument that he stands before the Court to be
2 sentenced not because of harm he caused another but rather
3 because of the thoughts the Government attributes to him.
4 The Government notes or argues and asserts that the
5 Defendant overlooks the fact he was convicted by a jury
6 upon proof of specific actions he took in furtherance of a
7 crime that has been held to be a crime of violence. The
8 Government also points out that the Defendant
9 intentionally and deliberately committed a crime of
10 violence which could have resulted in harm to others.

11 Taking all of that into consideration in light
12 of all the things I have discussed, including the
13 restricted guideline range and the relevant §3553 factors,
14 the statutory maximum, the motions brought forward by the
15 parties and discussed in some detail by the Court today,
16 and considering the arguments and positions of the
17 Government and the Defendant, the allocation of the
18 Defendant, the presentence report and all the evidence in
19 the Court, the Court will impose a sentence in this case
20 of 4 years or 48 months. For all the reasons discussed,
21 the Court finds this sentence to be sufficient but not
22 greater than necessary to comply with the purposes
23 discussed in 18 United States Code §3553.

24 Accordingly and pursuant to the Sentencing
25 Reform Act of 1984, it is the judgment of the Court on

1 Count 1 of the superseding indictment that the Defendant,
2 Darren Wesley Huff, is hereby committed to the custody of
3 the Bureau of Prisons to be imprisoned for a term of 48
4 months.

5 As previously noted, it is recommended he
6 receive mental health treatment while in the Bureau of
7 Prisons.

8 Upon release from imprisonment, you shall be
9 placed on supervised release for a term of two years
10 within 72 hours of release from the custody of the Bureau
11 of Prisons. You shall report in person to the probation
12 office in the district to which you are released.

13 While on supervised release, you shall not
14 commit another federal, state or local crime, you shall
15 comply with the standard conditions adopted by this court
16 in Local Rule 83.10, and you shall not illegally possess a
17 controlled substance.

18 You shall not possess a firearm, destructive
19 device or other dangerous weapon.

20 You shall cooperate in the collection of DNA as
21 directed by the probation officer.

22 In addition, you shall comply with the following
23 special conditions while on supervised release:

24 One, you shall participate in a program of
25 mental health treatment as directed by the probation

1 officer until such time as you are released from the
2 program by the probation officer. You shall waive all
3 rights to confidentiality regarding mental health
4 treatment in order to allow release of information to the
5 supervising US Probation Officer and to authorize open
6 communication between the probation officer and mental
7 health treatment provider.

8 Two, you shall take all medication prescribed by
9 the treatment program as directed. If deemed appropriate
10 by the treatment provider or probation officer, you shall
11 submit to quarterly blood tests to determine whether you
12 are taking the medication as prescribed.

13 Three, you shall participate as necessary in a
14 program of testing and/or treatment for drug and/or
15 alcohol abuse as directed by the probation officer until
16 such time as you are released from the program by the
17 probation officer.

18 Title 18 U.S.C. §3565(b) and §3583(g) require
19 mandatory revocation of probation or supervised release
20 for possession of a controlled substance or firearm or for
21 refusal to comply with drug testing.

22 Pursuant to Title 18 U.S.C. §3013, you shall pay
23 a special assessment fee in the amount of \$100.00 which
24 shall be due immediately. If the Court finds you do not
25 have the ability to pay a fine, it will waive the fine in

1 this case.

2 Pursuant to Rule 32 of the Federal Rules of
3 Criminal Procedure, the Court advises you may have the
4 right or you have the right to appeal the conviction and
5 sentence imposed in this case. A Notice of Appeal must be
6 filed within 14 days of entry of judgment. If you request
7 and so desire, the Clerk of the Court can prepare and file
8 the Notice of Appeal for you.

9 It is further ordered that you be remanded to
10 the custody of the Attorney General pending designation by
11 the Bureau of Prisons.

12 Mr. Theodore or Mr. Mackie, does the Government
13 have any objection to the sentence as pronounced that have
14 not previously been raised?

15 MR. THEODORE: No, Your Honor.

16 THE COURT: Thank you.

17 Mr. Green, does the Defendant have any objection
18 to the sentence just pronounced that has not been
19 previously raised?

20 MR. GREEN: We most respectfully object to the
21 sentence rendered, Your Honor, and adopt all previous
22 objections that were made up to this point.

23 And I have one other motion when the Court is
24 through.

25 THE COURT: And the Court certainly believes, in

1 response to the statement just made, that it has
2 sufficiently addressed all of the motions and arguments
3 that are raised by the Defendant. We will just
4 incorporate its responses previously made this morning as
5 well as the previous written orders of this court.

6 The other motion before the Court is the motion
7 by Mr. Green to withdraw after sentencing filed in this
8 case as Document 201, and the Court has reviewed that
9 motion as well as the affidavit submitted by Mr. Green and
10 is prepared to grant that motion at this time. Although,
11 as it has done in other cases, the Court would grant the
12 motion, Mr. Green, on the condition that you prepare or
13 assist in preparing with the Clerk's Office a pro se
14 Notice of Appeal for Mr. Huff.

15 It looks like you already have that.

16 MR. GREEN: We have done so, Your Honor.
17 Mr. Huff has signed the Notice of Appeal. We have not
18 dated it. I understand, obviously, once the notice is
19 filed, the Court loses jurisdiction. I didn't know if the
20 Court wanted to wait a day to -- for us to wait a day
21 before submitting it, but we will get that filed.

22 THE COURT: You might want to submit it after
23 the Court enters its written judgment in this case.

24 Would that be more appropriate, Madam Courtroom
25 Deputy?

1 THE DEPUTY CLERK: Yes, sir.

2 THE COURT: Because your 14 days is from the
3 entry of judgment, which would be the --

4 MR. GREEN: Correct. That's what I'm saying,
5 but Mr. Huff has signed the pro se notice and we'll make
6 certain that it's filed timely, Your Honor.

7 THE COURT: Does the Government have any
8 response or objection to the motion to withdraw?

9 MR. THEODORE: No objection, Your Honor.

10 THE COURT: Mr. Huff, you have signed the
11 notice. You don't have anything further to say on Mr.
12 Green's request, do you?

13 MR. HUFF: No.

14 THE COURT: Then the Court will grant the motion
15 to withdraw after sentencing on the condition, again, that
16 Mr. Green assists Mr. Huff, as he has already done, in
17 preparing a pro se Notice of Appeal and to insure that
18 that notice is filed within 14 days after entry of
19 judgment in this case.

20 MR. GREEN: We'll make certain it's done, Your
21 Honor.

22 THE COURT: Anything further on the Defendant's
23 behalf at this time before sentence is imposed?

24 MR. GREEN: No, Your Honor.

25 THE COURT: Any recommendations for designation?

1 It may not have been something you discussed, but --

2 MR. GREEN: We haven't at any great length, Your
3 Honor. He has got family in Knoxville. He has got
4 family -- I think the closer family he has got is in the
5 state of Georgia. If the Court could designate a facility
6 that is going to be as close as possible to Dallas,
7 Georgia.

8 The Gaston, Alabama facility may be the best
9 one, Your Honor.

10 THE COURT: We will recommend that one.

11 MR. GREEN: I think that's a medium security
12 facility.

13 THE COURT: We will make that recommendation,
14 and if you-all want to discuss it just a moment once court
15 adjourns and you have any other recommendations, just give
16 those to us.

17 Anything further from the defense?

18 MR. GREEN: No, Your Honor.

19 THE COURT: Anything further from the
20 Government?

21 MR. THEODORE: Your Honor, I guess I was
22 wondering if there could be a record, if the Court could
23 indicate what the basis -- because there is a variance
24 from the guideline range, what the -- because I realize
25 the Defendant's motions for variance have been denied

1 and --

2 THE COURT: Well, the Court is not -- did not
3 grant the Defendant's variance, but the Court went below
4 the restricted guideline range for the reasons articulated
5 by the Court not in granting a variance but in
6 determining -- the Court arrived at a sentence of 4 years
7 or 48 months based upon its consideration of the §3553
8 factors.

9 MR. THEODORE: Okay. Thank you.

10 THE COURT: If there is nothing further from
11 either side, we will stand in recess.

12 Thank you, everyone.

13 THE DEPUTY CLERK: All rise.

14 This Honorable Court stands in recess until 1:30
15 p.m.

16

17 (End of proceedings.)

18

19

20

21

22

23

24

25

C E R T I F I C A T E

STATE OF TENNESSEE)

COUNTY OF KNOX)

I, KRISTIN E. SCHULTZ BURKE, LCR #247, Court Reporter and Notary Public, in and for the State of Tennessee, do hereby certify that the above proceedings were reported by me, transcribed by me, and that the foregoing 107 pages of the transcript is a true and accurate record to the best of my knowledge, skills and ability.

I further certify that I am neither of kin nor of counsel to any of the parties nor in anywise financially interested in the outcome of this case.

I further certify that I am duly licensed by the Tennessee Board of Court Reporting as a Licensed Court Reporter as evidenced by the LCR number and expiration date following my name below.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal this 13th day of March, 2013.



Kristin E. Schultz Burke, LCR #247
Expiration Date: 6/30/2014
Notary Public Commission Expires: 12/27/2015
Miller & Miller Court Reporters
12804 Union Road
Knoxville, TN 37934
Phone: 865-675-1471 / Fax: 675-6398

